



Samuel P. Houston



**REDACTED**

Dr. Leo Chen

09/019/05

I'm writing this letter in order to help you write your letter for my Veteran Administration (VA) Claim for my Left Shoulder.

- The history of my left shoulder starting with my first surgery dated June 15, 2000 Surgeon was Dr. Fitzpatrick. Operation performed was Left Shoulder Arthroscopic, Subacromial Decompression and open rotator cuff repair.
- Your history of my last two surgeries the Operative Reports.
- Any permanent physical restrictions you deemed appropriate for my left shoulder.
- "In my professional opinion...." Knowing the Medical background of Mr. Houston and the many Medical restriction place on him "I recommend that Samuel P. Houston be removed from the work force".
- In any letter to the VA from any Doctor there are two phrases that are required in a Letter "In my professional opinion" and the other required phrase is "The natural progression of this disease".
- "The natural progression of this disease". This sentence should explain the whole person concept that is including the possibly of another torn rotator cuff and its Impact on upon my life.
- I've can not perform my duties as an aircraft mechanic any more and with the permanent physical restrictions that Dr. Manski put me on, due to my last back surgery, nobody will hire me for any kind of job. My former employer put me on long term medical leave status so I may pay for my dental and vision benefits I've accepted my fate as Mr. Mom around the house.

With your letter and Dr. Cruz 's letter, I should be granted my unemployability status from the VA. Your copy of Dr. Manski letter explains the history of my back with your letter explaining the history of my left shoulder and your recommendation to remove me from the workforce. I should have a favorable out come with the VA.

Sincerely  
Sam Houston

Sam Houston v. L3  
Communications  
160



# Exhibit C

**IN THE UNITED STATES DISTRICT COURT RECEIVED  
FOR THE MIDDLE DISTRICT OF ALABAMA**

**NORTHERN DIVISION  
SOUTHERN**

2006 MAR 15 P 1:59

<b>SAMUEL HOUSTON</b>	)	DEBRA P. HACKETT, CLK
	)	U.S. DISTRICT COURT
<b>Plaintiff</b>	)	MIDDLE DISTRICT ALA
	)	
<b>v.</b>	)	<b>CASE NUMBER 2:06-cv-1:06cv243-MEF</b>
	)	
<b>ARMY FLEET SERVICES, L.L.C.,</b>	)	<b>(JURY DEMAND)</b>
	)	
<b>Defendant</b>	)	

**COMPLAINT**

**NATURE OF THE ACTION**

This is an action under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.*; and violation of the Family and Medical Leave Act of 1993 (“FMLA”), 29 U.S.C. § 2601, *et. seq*, to redress unlawful treatment of the plaintiff while he was employed by Army Fleet Services, L.L.C. (“Fleet Services” or “AFS”).

**JURISDICTION AND VENUE**

1) Jurisdiction of this court is invoked over this action pursuant to 28 U.S.C. §§ 1331, 1343(a) (4), 1367(a); 42 U.S.C. §§ 12117(a); 29 U.S.C. § 2617; and 2000e-5(f). All actions alleged herein occurred while the plaintiff was employed by the defendant in Coffee County, Alabama.

**PARTIES**

2) The Plaintiff, Samuel Houston, is above the age of nineteen years and a resident of Walton County, Florida, at all times pertinent to this suit.

3) The Defendant, Army Fleet Services, L.L.C., is an entity doing business in the state of Alabama.

## FACTS

4) Samuel Houston was initially hired to work as an aircraft mechanic at the Army Aviation Technical Test Center (ATTC) located at Cairns Army Air Field in February 2002 by DynCorp Technical Services, LLC. Houston continued this employment with the defendant Army Fleet Services, L.L.C., when the defendant won the aircraft maintenance contract from the U. S. Army.

5) Houston was ordered by his physician to stay out of work after he suffered an injury to his back while doing chores at his home in August of 2004. Houston notified his supervisor that his doctor had imposed physical restrictions that prevented him from returning to work and he began a short-term disability leave in accordance with company policy on or about September 7, 2004. Houston subsequently had surgery on his back in November 2004.

6) Following a lengthy period of recuperation, Houston returned to the human resources office of AFS on March 7, 2005 with an authorization to return to work signed by Dr. Thomas Manski. The physician's return to work form stated that Houston was permanently restricted from lifting more than 25 pounds; climbing; standing more than one hour and 30 minutes; prolonged sitting (more than one hour and 30 minutes); and from bending at the waist to lift, pull, twist, or push to prevent reinjury to his lower back. The AFS human resources representative refused to accept Houston's return to work form because the

physician did not list a specific date for him to return to work, but did inform Houston that he would not be able to return to his job as an aircraft mechanic with the physical restrictions imposed by Dr. Manski. Houston discussed with the human resources representative the possibility of transferring to a position as an aircraft scheduler as an accommodation for his physical restrictions. He was informed that he would have to be able to type thirty words a minute to qualify for that position; to brush up on his typing skills; and, that he could apply to reclassify to the scheduler's position when he returned to human resources with his dated return to work slip.

6) Houston returned home to seek an appointment with his physician to obtain a dated return-to-work authorization. He also enrolled at the Jobs Plus center in Crestview, Florida to practice his typing skills in order to qualify for the controller's position and was able to successfully achieve the desired thirty words per minute typing rate.

7) Houston obtained a return-to-work authorization dated for March 3<sup>rd</sup> from Dr. Manski on March 10<sup>th</sup> and returned to the AFS human resources office on March 14, 2005. Houston had been informed on a visit to the human resources office on March 11, 2005 that he would be fired due to physical restrictions which had been listed on his initial return to work form. Houston reported to the AFS human resources office on March 14<sup>th</sup> to in-process from his short-term disability leave and was officially informed that he would be involuntarily terminated. When Houston asked about reclassifying to another position as an accommodation

of his physical disabilities, he was informed that he could not reclassify for another position until he was able to return to work in his job as an aircraft mechanic. This was impossible since his physical limitations permanently prevented him from returning to his job as an aircraft mechanic, Houston asked for the forms to request reclassification as an aircraft scheduler. He was refused the appropriate paperwork to request this accommodation.

8) Houston did receive forms that day from AFS to out-process from his employment at the Army Aviation Training Command work center which stated that he had been involuntarily terminated. Houston began the formal process of his separation from employment with the defendant.

9) Houston returned to AFS on March 15, 2005 to complete his out-processing and was given new paperwork which indicated that he was being administratively terminated from his job. He was told that he would have "call back" rights under the union bargaining agreement for his job as an aircraft mechanic. He was also informed that he could receive unemployment benefits due to his termination.

10) Houston unsuccessfully sought assistance from the EEO office at Eglin AFB, Florida, and the EEO and Inspector General's office at Fort Rucker, Alabama in an effort to redress the issue of his termination due to his physical disability.

11) Houston was eventually denied unemployment benefits when AFS claimed that he was not really terminated from his job as an aircraft mechanic, but

instead that he was laid off and subject to being called back to work in that position.

12) Houston pursued his complaint of disability discrimination through U. S. Department of Labor and the Office of Federal Contract Compliance, and was issued a notice

COUNT ONE  
(Americans with Disabilities Act/Retaliation)

13) Plaintiff incorporates by reference each and every allegation contained in paragraphs one through twelve as if fully rewritten herein and further states:

14) Count One of this Complaint is brought pursuant to 42 U.S.C. § 12101 et seq.

15) The defendant, Army Fleet Services, L.L.C., is an entity in a business affecting commerce as defined in 42 U.S.C. § 12111(5) (A).

16) The Plaintiff is a qualified individual with a disability, or one who is perceived to have a disability, as defined in 42 U.S.C. § 12111(8), and who was an employee of the defendant at all times pertinent to this suit..

17) The Plaintiff was unlawfully discriminated against by the denial of accommodation for said disability, or perception thereof; and by his discharge from employment by the defendant Army Fleet Services, because of his disability, or perception thereof, and in retaliation for seeking said accommodations.

18) Fleet Services unlawfully retaliated against Houston for pursuing his

rights under the Americans with Disabilities Act following his termination from employment by interference with his right to qualify for and receive benefits earned and due him, and otherwise.

19) The actions of the Defendant in this denial of rights secured by law were committed intentionally and in reckless disregard for the law.

WHEREFORE, the plaintiff prays that Army Fleet Services, upon a trial by jury, be adjudicated to have violated the ADA; that he be awarded (i) appropriate damages to compensate him for any and all back pay and other benefits, including but not limited to reinstatement, promotions, transfers, and any other appropriate relief that the plaintiff has lost as a result of defendant's violation of the ADA; (ii) appropriate "compensatory damages" within the meaning of 42 U.S.C. § 1981a or as otherwise allowed by law; (iii) punitive damages in an appropriate amount as determined by the jury; (iv) that the defendant be permanently enjoined from continuing these unlawful practices; (v) reasonable costs and attorney's fees; and (vi) any and all other relief to which he may be entitled in law or in equity.

COUNT TWO  
(FMLA Interference)

20) Plaintiff incorporates by reference each and every allegation contained in paragraphs one through eighteen as if fully rewritten herein and further states:

21) Count Two of this Complaint is brought pursuant to 29 U.S.C. § 2611 et seq.

22) Houston was employed by AFS and/or its predecessor in interest for longer than 12 months prior to the leave of absence at issue and worked at least 1,250 hours of service for AFS during the 12 months preceding his request for a medical leave of absence. As such, Houston was an "eligible employee" pursuant to 29 U.S.C. § 2611(2).

23) Defendant, AFS, employed 50 or more employees at the location where plaintiff was employed or in combination with other locations within a 75-mile radius of plaintiff's work site for each working day during each of 20 or more calendar work weeks in the previous calendar year and was a covered "employer" pursuant to 29 U.S.C. § 2611(4).

24) Houston injured himself as set forth above and underwent surgery in November 2004. He notified his supervisor at Fleet Services of his injury and medical restrictions on or about September 7, 2004, and was placed on short term medical disability. Houston kept defendant apprised regarding his medical condition during his leave of absence.

25) Houston was not given notice in writing before the leave began that his paid time off leave and short term disability leave would be counted towards his maximum 12 weeks of leave allowed under the FMLA. Houston never received any notice that his short-term medical disability was or was not designated as FMLA-qualifying leave for his own serious health condition.

26) When Houston attempted to return to work with physical restrictions on or about March 7, 2005, he was informed that he would not be returned to his

prior job as an aircraft mechanic, with or without accommodations. Houston requested that he be permitted to qualify for a transfer to another job classification which would accommodate his restrictions, and was informed of the qualifications for that position.

27) Fleet Services denied Houston any opportunity to return to his employment, and terminated his employment without any effort to accommodate his medical restrictions. Houston was informed that he would have to be able to return to his prior position before he could be considered for any equivalent positions which might accommodate his medical restrictions.

28) These actions of the defendant constitute an interference with Houston's rights under the FMLA and his termination of employment is unlawful.

29) Fleet Services retaliated against Houston following his efforts for redress of its discrimination against him by interference with his right to qualify for and receive benefits earned and due him.

WHEREFORE, the plaintiff prays that Army Fleet Services, upon a trial by jury, be adjudicated to have violated the FMLA; that he be awarded: (i) appropriate damages to compensate him for any and all back pay and other benefits, including but not limited to reinstatement, promotions, transfers, and any other appropriate relief that the plaintiff has lost as a result of defendant's violation of the FMLA; (ii) appropriate "compensatory damages" within the meaning of 42 U.S.C. § 1981a or as otherwise allowed by law; (iii) liquidated damages in an appropriate amount as equal to the compensatory damages

Case 1:06-cv-00243-MEF-CSC Document 1 Filed 03/15/2006 Page 9 of 9

determined by the jury; (iv) that he be awarded compensatory and exemplary damages due him for the retaliation against him for asserting his legal rights; that the defendant be permanently enjoined from continuing these unlawful practices; (v) reasonable costs and attorney's fees; and (vi) any and all other relief to which he may be entitled in law or in equity.

THE PLAINTIFF REQUESTS A TRIAL BY JURY.

  
\_\_\_\_\_  
JIMMY JACOBS (JAC051)  
Attorney for Plaintiff  
143 Eastern Boulevard  
Montgomery, Alabama 36117  
(334) 215-1788



# Exhibit D

STATE OF ALABAMA )  
COUNTY OF DALE )

**AFFIDAVIT OF ROBERT WHITNEY**

1. My name is Robert A. Whitney. I am over nineteen (19) years of age. I currently serve as Manager for Security and Investigations for AFS's operations at Fort Rucker. I have held my current position since February 2006. Prior to holding my current position, I was the Human Resources Compliance officer. The facts in this affidavit are based upon my own personal knowledge and/or review of documents kept in the normal course of business by AFS.

2. AFS-Fort Rucker is a unionized workforce. Bargaining unit positions are governed by a collective bargaining agreement.

3. The collective bargaining agreement sets out certain procedures regarding employees that wish to reclassify to another position. Specifically, section 35.1 of the CBA provides that in order to reclassify an employee must be qualified for the position requested, must be an active employee, must be the most senior of the employees bidding for the position and must have a status change request form on file.

5. An employee seeking reclassification must be qualified for the position being sought. An employee's qualifications for the position are determined by a review of the employee's personnel file at the time the employee requests reclassification. Therefore, it is the responsibility of the employee wishing to reclassify to ensure his personnel file reflects his qualifications in terms of requisite skill, education and experience.

6. Inactive employees retain certain rights under the CBA, including the absolute right to reinstatement of the last classification held, the continued accrual of seniority and the opportunity to participate in employer-sponsored benefits programs. These rights continue

through the lesser of the employee's length of seniority at the time leave commences or five years.

7. At the time Mr. Houston attempted to return to work in March 2005, I interpreted the CBA to provide that an employee remains active for purposes of reclassification through the duration of paid short-term disability leave. In other words, an employee's active employment status ends at the expiration of short-term disability leave. I believe this interpretation was fairly widespread among the Human Resources staff, including bargaining unit members serving as Personnel Specialists. Subsequent to this litigation, it came to light that an alternative interpretation provides that active employment ceases after thirty days of continuous leave. The Company has expressed that it interprets the CBA in this way. This interpretation is reflected in the company's long standing personnel procedure regarding medical leave. A true and accurate copy of that procedure is attached hereto as Exhibit 1.

8. Mr. Houston applied for FMLA leave on September 10, 2004. I directed the approval of his request. It is customary for me to return the FMLA application, noting approval or disapproval, to the employee by mail or in person. Although I do not recall with certainty, I believe I returned Mr. Houston's application, with my approval noted, to him in person. Mr. Houston did not attempt to return to work when his FMLA leave expired in December 2004. It is my understanding that his doctor had no released him to return work at this point. Even after his FMLA leave expired, Mr. Houston's paid short-term disability leave continued for an additional fourteen weeks.

9. I recall Jo Ann Camarata, the HR Specialist responsible for reclassifications, asking me to intervene in a conversation she was having with Mr. Houston regarding his return to work in March 2005. Mr. Houston was upset that he would not be returned to his Aircraft

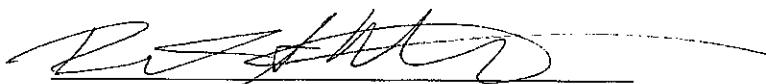
Mechanic position and that his pay would decrease if he reclassified to an Aircraft Scheduler position. I reiterated the CBA requirements for reclassification and, recognizing that Houston's active employment with the Company was ending that day, the day his short-term disability leave expired, I offered to allow Mr. Houston an additional week to submit a status change request form and supplement his personnel file with verification of his ability to type thirty words per minute, if he was interested. Houston did not express interest in an alternative position and demanded that he be returned to the Aircraft Mechanic position. He was upset at the suggestion by HR staff that he consider returning into a lower classification for lower pay. I told Houston to take some time to think about his reclassification options. Mr. Houston left the personnel office at this time.

10. Mr. Houston returned the following day with his wife to process out of his short-term disability leave into extended administrative leave and to enroll in benefits continuation. Accordingly, I concluded that Mr. Houston had decided to take extended leave rather than seek reclassification. At no time did Mr. Houston submit a reclassification form or typing verification.

11. I do not recall having any involvement in the company's response to Mr. Houston's application for unemployment compensation until the hearing before the Board of Appeals in July 2005. I did not have primary responsibility for responding to unemployment compensation applications at that time.

11. On September 6, 2005, I received an email from Mr. Houston advising me that the Veterans Administration had denied his claim for disability benefits because AFS had told the VA that he was still employed, albeit inactive. Houston asked me to send a statement to the VA clarifying his employment status. I passed this request on to my supervisor, Darlene

Whelan. Ms. Whelan complied with Mr. Houston's request and sent a clarification to the VA. Mr. Houston emailed me a few months later to tell me he had been deemed 100% disabled by the VA. Attached hereto as Exhibit 2 is a true and accurate copy of Mr. Houston's email.



Robert A. Whitney

Date: 3/30/07

STATE OF ALABAMA )  
DALE COUNTY )  
                    )

Before me the undersigned Notary for the said County and State did appear Robert A. Whitney, who being known to me did swear and affirm that the foregoing is true and complete, on this the 30<sup>th</sup> day of March, 2007.

NOTARY PUBLIC   
My Commission Expires: 11/20/2007

**CHAPTER 46****MEDICAL LEAVE**

ALL STATE LEGAL®

1

- I. PURPOSE:** To provide guidelines for administering the policy regarding medical leave of absence.
- II. OBJECTIVES:** To ensure proper administration and monitoring of the Medical Leave programs provided by the Company and to ensure strict adherence to applicable Federal Laws covering medical leave programs including the Family Medical Leave Act (FMLA).
- III. CONTROLS:** Supervisors approve disability leave of absence upon established proof of disability and indicate absence code on PAL Card. The Manager, Personnel Services and the Benefits Manager both monitor the FMLA program
- IV. DEFINITIONS:** None.
- V. PROCEDURES:**
  - A. Disabled employees** notify their supervisor of the disability and request leave of absence. The employee submits proof of disability through the Doctor's Certification.
  - B. Extended Medical Leave**
    1. If disabled longer than 30 days, employees are transferred from their assigned work area to an inactive status under the jurisdiction of the Human Resources Department as follows:

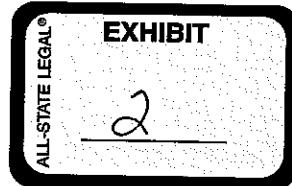
Personal Disability	- Direct Labor - Department 40
Personal Disability	- Indirect Labor - Department 41
Industrial Accident	- Direct Labor - Department 42
Industrial Accident	- Indirect Labor - Department 43
Family and Medical Leave	- Direct Labor - Department 44
Family and Medical leave	- Indirect Labor - Department 45
    2. The Personnel Section processes a Personnel Status Change Request, form 01-229, transferring the employee to an inactive status and clearing the employee through the department level.
    3. PAL cards indicating absence code are no longer required when transferred to the Inactive Department.

- C. Employees must present to Manager, Personnel Services with a release to return to work signed by their physician. Personnel Section coordinates with the appropriate director to determine location assignment.
  - 1. Personnel Section prepares Personnel Action transferring the employee to active status and coordinates with the department head to where he will be assigned.
  - 2. The returning employee may be examined by the company doctor at the discretion of the company. This examination is at the company's expense.
  - 3. The employee is allowed to return to work at light duty or with restrictions if he can be reasonably accommodated for a given period of time. The Manager, Personnel Services and the department head maintain coordination during the period of restriction.
  - 4. Employees will not be allowed to work while taking narcotics and/or mind-altering medications.

Whitney, Robert A.

**REDACTED**

**From:** Sam Houston  
**Sent:** Friday, December 23, 2005 11:10 AM  
**To:** Whitney, Robert A.  
**Subject:** The VA



Hi Bob,

I got some good news from the VA I was granted my 100% total and permanent disability from the VA, after 2 years of fighting .

Thanks for your help I will never forget you

Merry Christmas just 2 more days until Jesus Birthday  
Sam



# Exhibit E

## DEPOSITION OF ROBERT WHITNEY

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

SAMUEL HOUSTON,

Plaintiff,

vs. CASE NO. CV-06-243-MEF  
ARMY FLEET SERVICES, L.L.C.,  
Defendant.

\* \* \* \* \*

DEPOSITION OF ROBERT ALFRED WHITNEY,  
taken pursuant to stipulation and agreement  
before Sherry Mack, Court Reporter and  
Commissioner for the State of Alabama at Large,  
in the Conference Room of Holiday Inn Express,  
9 North Pointe Boulevard, Enterprise, Alabama, on  
Wednesday, February 21, 2007, commencing at  
approximately 8:55 a.m.

\* \* \* \* \*

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

2 (Pages 2 to 5)

Page 2

1 APPEARANCES  
 2 FOR THE PLAINTIFF:  
 3 Mr. Jimmy Jacobs  
 4 LAW OFFICE OF JIMMY JACOBS  
 5 Attorney at Law  
 6 4137 Carmichael Road, Suite 100  
 7 Montgomery, Alabama 36106  
 8 FOR THE DEFENDANT:  
 9 Ms. Monica G. Graveline  
 10 Mr. M. Jefferson Starling, III  
 11 BALCH & BINGHAM, L.L.P.  
 12 Attorneys at Law  
 13 1710 Sixth Avenue North  
 14 Birmingham, Alabama 35203

15 ALSO PRESENT:

16 Mr. Ken Demarco  
 17 \* \* \* \* \*  
 18 EXAMINATION INDEX  
 19 ROBERT ALFRED WHITNEY  
 20 BY MR. JACOBS 4  
 21 BY MS. GRAVELINE 108  
 22 EXHIBIT INDEX  
 23 PLAINTIFF'S EXHIBIT NO.:  
 1 Defendant's response 10  
 2 to plaintiff's 30(b)(6)  
 3 deposition notice  
 4 2 Defendant's responses 14,67,74  
 5 to plaintiff's requests  
 6 for admission  
 7 3 Answer 15,16,67  
 8 4 Complaint 15,16

Page 2

Page 4

1 any other purpose as provided for by the Federal  
 2 Rules of Civil Procedure.

3 It is further stipulated and agreed by  
 4 and between counsel representing the parties in  
 5 this case that said deposition may be introduced  
 6 at the trial of this case or used in any manner  
 7 by either party hereto provided for by the  
 8 Federal Rules of Civil Procedure.

9 \* \* \* \* \*

10 MS. GRAVELINE: I think we'll read and  
 11 sign.

12 ROBERT ALFRED WHITNEY

13 The witness, having first been duly  
 14 sworn to speak the truth, the whole truth, and  
 15 nothing but the truth, testified as follows:

16 EXAMINATION

17 BY MR. JACOBS:

18 Q. Mr. Whitney, I'm Jimmy Jacobs. I'm an  
 19 attorney representing Sam Houston in this  
 20 case. We met a little bit earlier. But this  
 21 is what is called under the rules a 30(b)(6)  
 22 deposition. Do you understand what that is?  
 23 A. Not fully, sir.

Page 3

Page 5

1 (PLAINTIFF'S EXHIBITS CONTINUED):  
 2 5 Job description- 58  
 3 aircraft scheduler  
 4  
 5 6 Return-to-work slip 91  
 6 from Dr. Manski  
 7 7 Return-to-work form 92  
 8 8 Personnel status 96  
 9 change request  
 10 9 Page 1 of personnel action 103-105  
 11 10 Page 2 of personnel action 103,104  
 12 \* \* \* \* \*

13 STIPULATIONS

14 It is hereby stipulated and agreed by  
 15 and between counsel representing the parties that  
 16 the deposition of ROBERT ALFRED WHITNEY is taken  
 17 pursuant to the Federal Rules of Civil Procedure  
 18 and that said deposition may be taken before  
 19 Sherry Mack, Court Reporter and Commissioner for  
 20 the State of Alabama at Large, without the  
 21 formality of a commission; that objections to  
 22 questions other than objections as to the form of  
 23 the questions need not be made at this time but  
 24 may be reserved for a ruling at such time as the  
 25 deposition may be offered in evidence or used for

10 A. Yes, I am.

11 Q. Would you state your full name for us,  
 12 please?

13 A. Robert Alfred Whitney.

14 Q. What is your connection with the defendant,  
 15 Army Fleet Services?

16 A. How do you mean, sir?

17 Q. Are you employed by the Army Fleet Services?

18 A. Yes, I am. I'm a current employee.

19 Q. What is your position of employment?

20 A. I'm the manager of security and  
 21 investigations.

22 Q. As the manager of security and  
 23 investigations, what generally are your

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

3 (Pages 6 to 9)

Page 6

Page 8

1       duties?

2       A. My primary duties are the oversight of  
3       compliance of the security section in  
4       accordance with the NISPOM, N-I-S-P-O-B --  
5       P-O-M. Sorry. National Security  
6       Regulations, 3-16, operational security, op  
7       sec, and also internal investigations in  
8       compliance.

9       Q. Could I ask you generally in compliance with  
10      what? Let me rephrase.

11      A. Yes, sir.

12      Q. Do you have any responsibility for ensuring  
13      compliance with the provisions of the  
14      Americans With Disabilities Act? Is that  
15      part of your job description?

16      A. Yes, sir.

17      Q. And exactly what are your duties in  
18      connection with ensuring compliance with the  
19      ADA?

20      A. I don't understand. What do you mean, sir?

21      Q. Well, I'm trying to find out. You said that  
22      part of your job was ensuring compliance with  
23      the ADA. I'm trying to find out what your

Page 7

Page 9

1       duties are in that regard, what  
2       responsibilities do you have for ensuring  
3       compliance with the Americans With  
4       Disabilities Act?

5       A. Primarily, I consult and train our  
6       subordinate staff within HR on the rules and  
7       regulations of the Americans With  
8       Disabilities Act as well as other federal  
9       laws, and ensure that they apply those rules  
10      and regulations correctly.

11      Q. Do you have a similar responsibility for the  
12      provisions of the Family Medical Leave Act?

13      A. Yes, sir.

14      Q. Okay. Are you -- is your position a part of  
15      the Human Resources division or department of  
16      the defendant?

17      A. No, sir. Security is not assigned to Human  
18      Resources.

19      Q. How long have you been in the position you're  
20      in currently?

21      A. Under this title, this current position has  
22      existed for approximately 12 months.

23      Q. So January or February of 2006 is when you

1       assumed that position?

2       A. Yes, sir.

3       Q. All right. What was your prior position?

4       A. Previous to that -- immediate previous or --

5       Q. Immediately previous.

6       A. Immediate previous position was the HR  
7       compliance officer.

8       Q. Okay. And did you have responsibilities for  
9       ensuring compliance with the ADA and the FMLA  
10      in that position?

11      A. Yes, sir.

12      Q. Did you have other duties in that position as  
13      well?

14      A. Yes, sir.

15      Q. What were your other duties?

16      A. As the HR compliance officer, I oversaw the  
17      training and administration of the general  
18      rules and regulations such as FMLA, ADA,  
19      ADEA, the Warrant Act, wage and hour issues,  
20      FLSA, responses to federal agencies, internal  
21      investigations of internal -- or internal  
22      complaints as well external responses.

23      Q. Did you have responsibility for dealing

1       directly with employees who were processing  
2       leaves and/or claims through the Human  
3       Resources Department?

4       A. How do you mean, sir?

5       Q. Well, let me give you a for example.  
6       Mr. Houston was on medical leave. Are you  
7       aware of that?

8       A. Yes, sir.

9       Q. In order to obtain that leave and maintain  
10      that leave, Mr. Houston had to submit various  
11      forms and interact with the Human Resources  
12      Department. Was your position one where he  
13      would have interacted with you?

14      A. No, sir.

15      Q. What was your position relative to those  
16      persons that he would have interacted with?  
17      Let me rephrase. Were you the supervisor of  
18      the persons who he would have interacted  
19      with?

20      A. No, sir.

21      Q. What was your relationship with those persons  
22      that he did interact with?

23      A. I -- I want to make sure we're clear by your

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

4 (Pages 10 to 13)

Page 10

1 stating that the persons he interacted with.  
 2 Q. For example, there was an individual whose  
 3 name I've seen. Just one I recall was a  
 4 Penny Westrick, I believe.  
 5 A. Okay.  
 6 Q. What was your relationship within in the  
 7 organization with Ms. Westrick?  
 8 A. Penny Westrick is a program coordinator  
 9 within HR. At the time, I was HR  
 10 compliance. Although I would not have been a  
 11 direct supervisor, I could act in consulting  
 12 manner or intervene on the manager's behalf.  
 13 Q. Did you direct her activities in any way?  
 14 A. In this instant or the --  
 15 Q. In this instance. I'll get it down to that.  
 16 A. I really don't know, sir.  
 17 Q. You don't know. I'll mark this as  
 18 Plaintiff's #1, and I want to show you. Have  
 19 you seen the deposition notice that you're  
 20 here on today?  
 21 A. This document right here?  
 22 Q. No, not this document. Have you seen a copy  
 23 of a document headed Notice of 30(b)(6)

Page 11

1 Deposition?  
 2 A. I don't know by that title, sir.  
 3 Q. Have you seen the document that informed you  
 4 of the topics that I would be asking you  
 5 questions the about today?  
 6 A. I don't know, sir.  
 7 Q. You don't know whether you have or not?  
 8 A. Correct, sir. I mean, I've seen documents.  
 9 I don't know which document you're referring  
 10 to.  
 11 Q. Okay. Well, let's just go through them. The  
 12 document that you have in front of you is  
 13 your attorney's response to my 30(b)(6)  
 14 deposition notice. So I'll just ask you if  
 15 you are aware of and able to answer questions  
 16 regarding all of the facts and opinions that  
 17 Army Fleet Services may have that would bear  
 18 on the accuracy or inaccuracy of their  
 19 denials in their answer to Mr. Houston's  
 20 complaint?  
 21 MS. GRAVELINE: Jimmy, we're tendering  
 22 him pursuant to -- or limited by  
 23 the objections we've made, so I'm

Page 12

1 going to object to this as an  
 2 unfair question to him because  
 3 we're not tendering him to testify  
 4 to the topics as you wrote them.  
 5 I'm only tendering him to testify  
 6 to the topics pursuant to our  
 7 objections. And some of them have  
 8 been limited by our objections.  
 9 MR. JACOBS: Would you explain to me  
 10 what the limits of your objection  
 11 are, though?  
 12 MS. GRAVELINE: Yeah. We can't --  
 13 MR. JACOBS: You've objected to  
 14 answering any questions about your  
 15 denials here.  
 16 MS. GRAVELINE: No. He will answer  
 17 within reason, but you've asked  
 18 for all facts and opinions. And  
 19 that's overly broad. But he is  
 20 here to testify as to the topics  
 21 subject to the limitation that he  
 22 can't possibly know all facts or  
 23 opinions. No one could. No one

Page 13

1 person could. We could string 20  
 2 people in here, they wouldn't know  
 3 it.  
 4 Q. Can you testify to all facts and opinions  
 5 that are within the knowledge of Army Fleet  
 6 Services regarding their denials in this  
 7 complaint today?  
 8 A. I can only testify to my own.  
 9 Q. Have you done any investigation to look into  
 10 what the facts and opinions are of Army Fleet  
 11 Services regarding their denials in this  
 12 complaint before you came here today?  
 13 A. How do you mean, sir?  
 14 Q. I mean, have you done any preparation for  
 15 this deposition today?  
 16 MS. GRAVELINE: I'll caution you not to  
 17 share anything you and I have  
 18 talked about.  
 19 Q. Not anything you discussed with the attorney,  
 20 but --  
 21 A. I have reviewed our responses to federal  
 22 agencies and documents we produced.  
 23 Q. Have you investigated any of the matters

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

5 (Pages 14 to 17)

Page 14

1 behind those documents? For example, if it  
 2 asserted a fact, did you determine whether  
 3 that fact was true or not?  
 4 A. How do you mean, sir?  
 5 Q. Have you done anything further than simply  
 6 review the documents?  
 7 A. I reviewed all documents pertaining to this  
 8 complaint as represented by Army Fleet  
 9 Support. Yes, sir.  
 10 Q. Okay. We're going to go through these, so  
 11 we'll find out. Have you seen Mr. Houston's  
 12 request for admissions in this case?  
 13 A. By title, I don't know, sir.  
 14 Q. Okay.  
 15 MR. JACOBS: Mark this as Plaintiff's  
 16 #2.  
 17 Q. If you would look at the document, it's  
 18 titled Defendant's Responses to Plaintiff's  
 19 Request for Admissions. Have you seen that  
 20 document before today?  
 21 A. I have --  
 22 Q. -- before today?  
 23 A. I have seen this.

Page 15

1 Q. Are you prepared to answer questions  
 2 regarding those denials that are contained in  
 3 this document today?  
 4 A. I am.  
 5 Q. Okay.  
 6 MR. JACOBS: Mark this as #3.  
 7 Q. Have you reviewed the Army Fleet Services  
 8 answer to Mr. Houston's complaint in this  
 9 case, the documents that's before you now?  
 10 A. I have.  
 11 Q. Okay.  
 12 MR. JACOBS: Let's go ahead and mark  
 13 the next one.  
 14 Q. This is a copy of the complaint. Have you  
 15 reviewed this document?  
 16 A. Yes, sir.  
 17 Q. I would suggest that we -- we're going to  
 18 look at the complaint and answer, and I'm  
 19 going to ask you some questions regarding  
 20 that.  
 21 A. The first -- you mean the #4 document?  
 22 Q. Yes. I'm going to ask you questions  
 23 regarding the answers, but the way the

Page 16

1 answers are constructed, it's going to be  
 2 necessary for us to look at both documents to  
 3 see the question as well as the answer.  
 4 A. You're looking at #3 and #4?  
 5 Q. Yes. I'd like to direct you to #4. Does  
 6 Army Fleet Services deny that Mr. Houston  
 7 initially went to work for DynCorp in 2002?  
 8 A. I'm sorry, sir. Repeat please.  
 9 Q. Does Army Fleet Services deny that  
 10 Mr. Houston initially went to work -- was  
 11 hired and went to work with DynCorp in  
 12 February of 2002? In the answer, you only  
 13 admit that he was employed -- became employed  
 14 by AFS.  
 15 A. Yes, sir. And that's what my response is.  
 16 Mr. Houston was hired by Army Fleet Support  
 17 in December of 2003.  
 18 Q. Was he formerly an employee of DynCorp?  
 19 A. I can speculate, sir. His seniority states  
 20 that he held employment previous.  
 21 Q. Does his personnel file at DynCorp include  
 22 any information related to his job  
 23 performance while he was working as an

Page 17

1 employee of DynCorp?  
 2 A. Army Fleet Support does not have access to  
 3 DynCorp personnel files. I don't know what's  
 4 in his DynCorp personnel file, sir.  
 5 Q. And that is in essence my question. There  
 6 was no transfer of personnel files or  
 7 information from DynCorp to Army Fleet  
 8 Services when they took over?  
 9 A. No, sir. Army Fleet Support does not have  
 10 DynCorp files.  
 11 Q. Okay. You'll notice in the answer there are  
 12 two number sixes, and that was my error in  
 13 drafting the complaint. There are, in fact,  
 14 two number sixes in the complaint itself. In  
 15 your -- the first number six in the  
 16 complaint, there's a statement that  
 17 Mr. Houston returned to the Human Resources  
 18 office on March the 7th with an authorization  
 19 to return to work signed by Dr. Manski; that  
 20 that return to work form stated that he was  
 21 permanently restricted from lifting more than  
 22 25 pounds, climbing, standing more than an  
 23 hour and a half, prolonged sitting more than

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

6 (Pages 18 to 21)

Page 18

1 an hour and a half or from bending at the  
2 waist to lift, pull, twist, or push in order  
3 to prevent re-injury to his lower back.

4 It goes on to state that the Human  
5 Resources representative refused to accept  
6 that return-to-work form because the  
7 physician did not list a specific date for  
8 him to return to work but did inform him that  
9 he would not be able to return to work as an  
10 aircraft mechanic with the physical  
11 restrictions imposed by Dr. Manski.

12 Goes on to state Mr. Houston discussed  
13 with the a Human Resources representative the  
14 possibility of transferring to a position as  
15 an aircraft scheduler as an accommodation for  
16 his physical restrictions; that he was  
17 informed at that time that he would have to  
18 type 30 words a minute to qualify for that  
19 position, to brush up on his typing skills  
20 and that he could apply to reclassify when he  
21 returned to HR with this dated return-to-work  
22 slip. The answer to that paragraph admits  
23 that he went to the Human Resource office on

Page 19

1 March the 7th.

2 Are all of the other matters in that  
3 paragraph true?

4 A. I wanted to clarify one thing first. When  
5 you read number six, and I don't know if the  
6 court reporter heard it different than I, you  
7 had read 45 pounds on the restrictions. It  
8 says 25 pounds.

9 Q. If I made that error, I regret it. It is 25  
10 pounds.

11 A. Yes, sir. The only thing I'm aware of -- and  
12 I can explain why the response would be like  
13 this is that he came to the Human Resources  
14 office. The person he would see would be a  
15 bargaining unit person who would receive that  
16 person at the window, take a look at the  
17 return-to-work slip and then begin the  
18 process of filling out a return-to-work slip  
19 form. If the form is incomplete, either the  
20 return-to-work date saying you're authorized  
21 to return to work today or you're authorized  
22 to return to work on Monday is incomplete or  
23 it fails to state your restrictions or lack

Page 20

1 of restrictions and/or medications, it's  
2 considered incomplete. And you must go back  
3 to your treating physician and get  
4 clarification. So in answering this, I did  
5 not see Mr. Houston on this meeting where he  
6 came to the Human Resources office on the  
7 7th, so I can't speak to what he states that  
8 a person told him these things. There is no  
9 record of any person saying that you can come  
10 back and you can do this, this, or this, just  
11 that you simply need to go back and get  
12 clarification on your return to work slip.

13 Q. Is there any record of his visit on that  
14 date?

15 A. I don't know, sir.

16 Q. If there were a record, where would it be?

17 A. Just as all persons coming to the Human  
18 Resources office, they're required to sign  
19 in.

20 Q. Okay. If you'd explain the physical layout  
21 for me. Is this office in a building?

22 A. Yes, sir.

23 Q. What else is in that building?

Page 21

1 A. Not to -- not to be a stickler, are you  
2 talking about the time Mr. Houston did these  
3 actions --

4 Q. Yeah.

5 A. -- or currently?

6 Q. That would be sufficient.

7 A. Because the office is different.

8 Q. Yes.

9 A. All right. At the time of this, the Human  
10 Resources office is located within a small  
11 strip mall in Daleville, Alabama. The Human  
12 Resources office is isolated from other  
13 adjoining offices. Although there is a  
14 separate door for Labor Relations, you can  
15 get to Labor Relations by going through Human  
16 Resources. That's not the primary entrance  
17 for Labor Relations. Otherwise, when you  
18 walk into the Human Resources office, you  
19 have a single-door entrance, goes into a  
20 small reception area. The reception area has  
21 a window which also has a counter where  
22 employees are asked to sign in and  
23 acknowledge that they need help. There's a

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

7 (Pages 22 to 25)

Page 22

1 receptionist there who is bargaining unit.  
 2 And the receptionist sees the primary purpose  
 3 for that person coming to Human Resources and  
 4 directs them to the bargaining unit personnel  
 5 handling their area.  
 6 Q. And I'm sorry. I didn't understand. Are you  
 7 saying the bargaining unit person?  
 8 A. Yes. In Human Resources, there are -- just  
 9 as in any union environment, there are hourly  
 10 bargaining unit and salaried exempt, which  
 11 are non-bargaining unit.  
 12 Q. Okay. Do you have different persons that  
 13 would handle different bargaining units? For  
 14 example, I know IAM is one of the unions you  
 15 deal with. Are there other unions?  
 16 A. It's the only union, sir.  
 17 Q. It's the only union. Okay.  
 18 A. I'm sorry if my terminology is archaic, but  
 19 it's the day-to-day term.  
 20 Q. That's one of those things about being an  
 21 attorney; you get to learn all sorts of  
 22 terminology and archaic things that are  
 23 common to other people but are strange to

Page 23

1 you.  
 2 A. Yes, sir.  
 3 Q. So when a person walks through the door, in  
 4 essence, they have to sign in before anything  
 5 else happens?  
 6 A. They should sign in, sir.  
 7 Q. What is the procedure once this person is  
 8 directed to a Human Resources  
 9 representative? What sort of records are  
 10 maintained?  
 11 A. Sir, it would really depend on the personnel  
 12 action. If a person is coming to change  
 13 their address or their phone number, they're  
 14 given the form to fill out. They go to the  
 15 HR representative, and that person enters the  
 16 data. If the person is coming in to elect or  
 17 change benefits or beneficiaries or something  
 18 like that, they'd be directed to that section  
 19 to fill out the necessary paperwork and  
 20 they'll be processed by them.  
 21 Q. What is the company's requirement for the HR  
 22 representative to make a record of their  
 23 activity in interacting with an employee, or

Page 24

1 is there any?  
 2 A. How do you mean, sir?  
 3 Q. Is the HR employee required to document their  
 4 meetings with employees?  
 5 A. There's no requirement for any sort of work  
 6 diary or work log. However, there must be a  
 7 source document. The source document must be  
 8 approved -- reviewed and approved prior to  
 9 any input.  
 10 Q. In the instance of Mr. Houston's visit with  
 11 his undated return-to-work form, what would  
 12 be the source document?  
 13 A. There would be no source document because he  
 14 would have been told, please go back to your  
 15 doctor and get clarification. A copy of that  
 16 document wouldn't have been kept.  
 17 Q. In the second number six, the statements  
 18 regarding Mr. Houston returning home and  
 19 practicing his typing skills and so on, and  
 20 the response is that you -- I'm sorry -- that  
 21 Fleet Services doesn't have enough  
 22 information to know whether that's true or  
 23 not. Is that essentially correct?

Page 25

1 A. There is no record of any of this, sir.  
 2 Q. Paragraph seven relates that Mr. Houston  
 3 obtained his return-to-work authorization.  
 4 And I made an error in the complaint, dated  
 5 for March the 7th. Actually, it's March the  
 6 14th. And that he returned to the Human  
 7 Resources offices again. That is denied. Is  
 8 there any record that Mr. Houston visited the  
 9 Human Resources offices again on March the  
 10 10th?  
 11 (Brief pause)  
 12 A. Excuse me.  
 13 Q. Sure.  
 14 A. I wanted to finish this.  
 15 Q. I'm trying to determine the basis for the  
 16 denial. Obviously, he didn't have a form  
 17 that said that he could come back to work on  
 18 March the 10th, but is there any record that  
 19 he returned to HR on March the 10th?  
 20 A. And I apologize for the delay. I'm -- I'm  
 21 just rereading these first two sentences and  
 22 making sure I understand exactly what they're  
 23 saying because they really don't. And if you

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

8 (Pages 26 to 29)

Page 26

1 could excuse me one second while I put my  
2 jacket on.

3 Q. Okay.

4 (Brief pause)

5 A. All right. I'm sorry. And we're talking  
6 about the second number six, correct?

7 Q. We're talking about number seven.

8 A. Number seven. Thank you.

9 Q. I think there may be two errors in that  
10 statement.

11 A. I believe so, sir.

12 Q. Okay. There would be a record of each time  
13 that Mr. Houston visited the HR department in  
14 March of 2005, would there not be, since he  
15 has to sign in? Would that be correct?

16 A. Provided he did sign in.

17 Q. Would anyone have talked with him unless he  
18 had signed in? I mean, an HR representative?

19 A. It's possible, sir.

20 Q. Okay.

21 A. So I'm still working on like I said these  
22 first three sentences. I've gone one more.

23 But the first sentence says Mr. Houston

Page 28

1 from his short-term disability leave and was  
2 officially informed he would be involuntarily  
3 terminated.

4 I'm not aware of that either.

5 Q. So you deny that -- are you denying -- does  
6 the company deny that he returned for  
7 in-processing on March the 14th?

8 A. By the form that you're asking, yes, he would  
9 not come to in-process. A person returning  
10 to work from a short-term disability is not  
11 returning to in-process. They're returning  
12 under the provisions under Article 35 to  
13 their previous classification, which is  
14 returning to work, not to in-process.

15 Q. Okay. Well, then let's change the  
16 terminology if we will. Does the company  
17 deny that he came on March the 14th to return  
18 to work?

19 A. I would have to look at his return-to-work  
20 documents to confirm the dates.

21 Q. We'll do that shortly.

22 A. Yes, sir.

23 Q. Let's look at paragraph eight which AFS

Page 27

1 obtained a return-to-work authorization dated  
2 for March 3rd from Dr. Manski on March 10th  
3 and returned to the Human Resources office on  
4 March 14th.

5 Q. That's obviously an error on my part. It's  
6 not true, and you certainly could deny that.

7 A. And I do.

8 Q. That's not true.

9 A. The second one is, Houston had been informed  
10 on a visit to Human Resources office on March  
11 that he would be fired due to physical  
12 restrictions which had been listed on his  
13 initial return-to-work form.

14 I'm not aware of any HR person who  
15 would have made a statement like that. And  
16 bargaining unit personnel would have been the  
17 ones to have received him, would have known  
18 his return-to-work conditions which would not  
19 have included being fired.

20 Q. Okay.

21 A. So that one I also would have to deny.

22 Houston reported to the AFS office -- Human  
23 Resources office on March 14th to in-process

Page 29

1 denied. It states that Houston did receive  
2 forms on the day that he came back to return  
3 to work to out-process from his employment  
4 and that he was involuntarily terminated, and  
5 that he began that formal process of  
6 separation on that date.

7 A. Once again, the form of the question, I have  
8 to deny because at the end of your six month  
9 short-term disability, you are not  
10 out-processed from the company unless the six  
11 months is longer than your time of  
12 employment. His reinstatement rights were  
13 out to five years or length of seniority,  
14 whichever is less. So his out-processing  
15 ATTC and Human Resources office was, in  
16 effect, the beginning of his status as an  
17 inactive employee after his short-term  
18 disability.

19 Q. Was he an active employee while he was on  
20 short-term disability?

21 A. Not after 30 days.

22 Q. All right. So he processed from being an  
23 inactive employee to being an inactive

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

9 (Pages 30 to 33)

Page 30

1 employee?  
 2 A. Yes, sir. Under a different provision of the  
 3 CBA.  
 4 Q. Was he on the payroll?  
 5 A. At which time, sir?  
 6 Q. While he was on short-term disability.  
 7 A. How do you mean, sir?  
 8 Q. Was he on the company payroll?  
 9 A. How do you mean, was he on the payroll? He  
 10 was not actively working; therefore, he was  
 11 not receiving a paycheck. However, he was  
 12 receiving company benefits.  
 13 Q. Tell me how many different ways you could be  
 14 on the Army Fleet Services payroll.  
 15 A. Please work with me on this.  
 16 Q. I'm trying to.  
 17 A. How do you mean on the payroll?  
 18 Q. He --  
 19 A. The provision -- and I'm sorry to interrupt.  
 20 I know that I asked for a classification.  
 21 But the provisions of the collective  
 22 bargaining agreement establish the different  
 23 status of employment, currently working or as

Page 32

1 on short-term disability?  
 2 A. No, sir. He was accruing seniority. His  
 3 benefits were paid. He picked up the  
 4 employer contribution, but he was not under  
 5 COBRA status.  
 6 Q. And I'm going to have to ask you to explain  
 7 that to me just a little bit. After March  
 8 the 14th, he began to pay the employer  
 9 portion of his benefits as well as the  
 10 employee portion; is that correct?  
 11 A. If his short-term disability benefits have  
 12 run out, yes, sir, up to the length of  
 13 seniority or five years, whichever is less.  
 14 Q. All right. So he was receiving no benefits  
 15 from Army Fleet Support or Services after  
 16 that date?  
 17 A. How do you mean, sir?  
 18 Q. Well, was he receiving any benefits from Army  
 19 Fleet Services after that date?  
 20 A. Yes, sir.  
 21 Q. What benefit was he receiving from the  
 22 company?  
 23 A. After that date, he still accrues seniority,

Page 31

1 to whether you're on a short-term disability  
 2 status, military leave of status -- or  
 3 military leave of absence, or on extended  
 4 leave of absence after short-term disability.  
 5 Q. Well, I think I understand he was on short-  
 6 term disability for a period of time of  
 7 approximately six months.  
 8 A. Yes, sir.  
 9 Q. Right. Was he on the payroll during that  
 10 time period?  
 11 A. Mr. Houston was still accruing seniority and  
 12 he was accruing benefits.  
 13 Q. During the time he was on the short-term  
 14 disability?  
 15 A. Yes, sir.  
 16 Q. When he attempted to return to work, on the  
 17 day after that, was he on the payroll?  
 18 A. I don't know what you mean, sir.  
 19 Q. Well, and I'm not sure that I know either.  
 20 It seems to me like a simple question. It's  
 21 either yes or no he was on the payroll or  
 22 not. Was he accruing seniority and benefits  
 23 after March the 14th like he was while he was

Page 33

1 and he's still allowed to participate in the  
 2 company-sponsored benefits at less than the  
 3 COBRA rate.  
 4 Q. Okay. Let's go to number nine, states that  
 5 he returned on March 15th to complete his  
 6 out-processing and was given paperwork that  
 7 indicated that he was being administratively  
 8 terminated. Is that the admission in number  
 9 nine, admitted he returned on March the 15th?  
 10 A. Number nine has more statements in it,  
 11 though.  
 12 Q. Tell me which parts of that are not true.  
 13 A. If there is record that Mr. Houston returned  
 14 on March 15th to complete his  
 15 out-processing -- and that would be on his  
 16 out-processing check list -- and was given  
 17 new paperwork which indicated that he was  
 18 being administratively terminated, that would  
 19 have been the terminology used on that  
 20 document at that time. It's old main frame  
 21 language, which is clarified. He was told  
 22 that he would have call-back rights under the  
 23 union bargaining agreement for his job as an

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

10 (Pages 34 to 37)

Page 34

1 aircraft mechanic. I don't know who would  
 2 have told him that, but that would be  
 3 correct. However, he was also informed that  
 4 he could receive unemployment benefits due to  
 5 his termination. I know of no person who  
 6 would have offered that up. He would have  
 7 been talking to bargaining unit personnel on  
 8 his out-processing.

9 Q. Okay. Do employees of AFS not qualify for  
 10 unemployment compensation if they are laid  
 11 off?

12 A. To my knowledge, Mr. Houston was not laid off  
 13 if that's what your question was.

14 Q. Well, it was going to be my question  
 15 ultimately, but my question was, would AFS  
 16 employees be entitled to unemployment if they  
 17 were laid off?

18 A. I don't know, sir.

19 Q. Okay. You don't know whether they would or  
 20 not?

21 A. Correct, sir. I --

22 Q. Okay. Could you give me the definitions that  
 23 AFS uses for the word "termination?"

Page 35

1 A. How do you mean, sir?

2 Q. On March the 14th and 15th of 2005, what were  
 3 the definitions of the word "terminated" from  
 4 employment in connection with employment that  
 5 AFS had?

6 A. How do you mean, sir? What was the  
 7 definition of termination?

8 Q. Yes. What was the definition of the word  
 9 termination in regard to your employment at  
 10 AFS on March the 14th and 15th?

11 A. The definition wouldn't change from day to  
 12 day. The definition of a termination is end  
 13 of employment.

14 However, as was clarified in several  
 15 instances, the word termination was language  
 16 that was embedded in a system that AFS no  
 17 longer possesses which carried that language,  
 18 not only in instances like this but also  
 19 under military, which we know is not a  
 20 termination. It's simply language that keys  
 21 benefits and change of status.

22 Q. Is that defined anywhere in company -- or was  
 23 that defined anywhere in company documents

Page 36

1 that that's what the word termination meant?

2 A. How do you mean, sir?

3 Q. Well, I mean in the real world where most of  
 4 us are -- and I understand that sometimes the  
 5 military world is a little different -- if a  
 6 person is terminated from their job, they no  
 7 longer have a job. So what I'm asking for is  
 8 where and how did AFS define the term  
 9 "termination" in connection with employment  
 10 with AFS as of March the 14th and 15th of  
 11 2005?

12 A. Then I would have to respond that termination  
 13 is a cessation of all pay and benefits in  
 14 affiliation with the company to include  
 15 representation by the collective -- or within  
 16 the collective bargaining agreement.

17 Q. Was Mr. Houston still within the collective  
 18 bargaining agreement on March the 14th?

19 A. Yes, sir.

20 Q. Of 2005?

21 A. Yes, sir.

22 Q. Was he still within the collective bargaining  
 23 agreement on April 1st, 2005?

Page 37

1 A. Yes, sir.

2 Q. Is he still within the collective bargaining  
 3 agreement today?

4 A. To my knowledge he is.

5 Q. All right. Number 10 indicates that Houston  
 6 unsuccessfully sought assistance from the  
 7 EEO office at Eglin and the IG's office at  
 8 Ft. Rucker, and that is denied.

9 You deny that that happened?

10 A. I deny any knowledge of it.

11 Q. Okay. Number 11, Houston was eventually  
 12 denied unemployment benefits when AFS claimed  
 13 he was not really terminated from his job as  
 14 an aircraft mechanic, but instead, he was  
 15 laid off and subject to being recalled.

16 You do admit that he was denied  
 17 unemployment benefits because his employment  
 18 had not be terminated. Is that the  
 19 discussion that we just had, that it's your  
 20 contention he was terminated but not  
 21 terminated?

22 A. No, sir, I've never made that claim.

23 Q. What was his status?

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

11 (Pages 38 to 41)

Page 38

1 A. Mr. Houston was an inactive employee with  
2 recall rights.

3 Q. What recall rights did he have?

4 A. The same as all other bargaining unit in  
5 inactive status, up to five years or length  
6 of seniority.

7 Q. Specifically, what call-back rights did he  
8 have?

9 A. How do you mean, sir?

10 Q. What could he be called back for?

11 A. If Mr. Houston's condition had improved such  
12 or allowed for his ability to return to work  
13 in his previous classification and could be  
14 with or without or could work in that  
15 classification with or without  
16 accommodations, he had full reinstatement  
17 rights with seniority.

18 Q. Okay. So he could be called back as an  
19 aircraft mechanic? That was his status with  
20 the company?

21 A. That's what he left as, yes, sir.

22 Q. Okay. Could he called back in any other  
23 position?

Page 39

1 A. How do you mean, sir?

2 Q. Well, and I don't know all of the positions  
3 that the company has. I sent some discovery  
4 requests, so we'll determine that. But I do  
5 know that there's one called an aircraft  
6 scheduler. Under the terms of his  
7 termination, could he have been called back  
8 as an aircraft scheduler?

9 A. To my knowledge, and through a review of his  
10 personnel file, I don't know him to be  
11 qualified as an aircraft scheduler;  
12 therefore, he would not be able to hold a  
13 position as an aircraft scheduler.

14 Q. Okay. We'll come back to that one, too. In  
15 response to the complaint as well as response  
16 for request of admissions, AFS denies that  
17 Mr. Houston is a disabled person according to  
18 the terms of the ADA. You've indicated that  
19 you're responsible for the compliance with  
20 the ADA. Could you tell me the basis of the  
21 company's denial, facts and opinions that you  
22 rely on that he is not a disabled person  
23 within the terms of the ADA?

Page 40

1 MS. GRAVELINE: I object to that as  
2 legal conclusion. You can answer  
3 if you know.

4 A. And that's -- and that's --

5 Q. And that's not a valid objection in the  
6 deposition, but go ahead.

7 A. That's my question. Are you asking for the  
8 legal definition under the ADA or --

9 Q. That's what this case is all about, is  
10 whether he was a disabled person, and the  
11 company has denied that he was. So I would  
12 like to know what facts you rely on to deny  
13 that he was a disabled person under the terms  
14 of the ADA.

15 MS. GRAVELINE: Same objection. You  
16 can answer if you know.

17 A. Under the ADA, a person must be able to  
18 perform the primary functions of the job with  
19 or without accommodations. By Mr. Houston's  
20 return-to-work slip and the advice of his  
21 treating physician, Mr. Houston could not  
22 perform as an aircraft mechanic in any  
23 capacity.

Page 41

1 Q. All right. Was there any other job that he  
2 could have performed?

3 A. Since Mr. Houston did not request an  
4 evaluation for any other position, I really  
5 wouldn't know what to evaluate him on.

6 Q. What analysis did Army Fleet Services  
7 undertake to determine whether or not the  
8 position of aircraft mechanic could be  
9 accommodated to his physical restrictions?

10 A. How do you mean, sir?

11 Q. What process did AFS undertake, go through,  
12 in order to make a determination that that  
13 job could not be accommodated to the physical  
14 abilities that he possessed on March the 14th  
15 of 2005?

16 A. Thank you, sir. Thank you. And I'm going to  
17 go through the standard procedure, and then  
18 we'll go to this particular return.

19 When a person is out on any length  
20 of -- of -- should I say medical evaluation,  
21 which under the CBA even states as short as  
22 three days -- if I'm out for three days and  
23 under medical supervision or for a medical

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

12 (Pages 42 to 45)

Page 42

1 reasons, when I return, I have to produce a  
 2 certification from my doctor stating when I'm  
 3 able to return to work, any and all  
 4 restrictions or lack of restrictions and any  
 5 medications. At that time, if there are  
 6 medications and/or restrictions, the hourly  
 7 personnel will contact designated personnel  
 8 at the field, usually the field manager, the  
 9 who one oversees all maintenance on the  
 10 airfield operations, to see if the specific  
 11 restrictions and/or medications or durations  
 12 of any of the above can or cannot be  
 13 accommodated.

14 In this case -- now we go to  
 15 Mr. Houston. Mr. Houston worked for the  
 16 Aviation Technical Test Center, ATTC, when he  
 17 brought his work restrictions in, even though  
 18 the doctor's note said, cannot work in any  
 19 capacity of an aircraft mechanic, it was  
 20 processed the same as all others. Under  
 21 normal circumstances, under the CBA, I will  
 22 call your director because that's who I  
 23 worked for. I left ATTC. I will call ATTC,

Page 43

1 and I will see if there is anything out there  
 2 available which can accommodate your  
 3 restrictions, duration of restrictions,  
 4 and/or medications.

5 In this case, because they did seem so  
 6 severe and we'd already gotten a denial from  
 7 the ATTC director who could not -- his  
 8 aircraft mechanics work on extremely  
 9 technical aircraft -- could not work with any  
 10 of these restrictions, we actually attempted  
 11 to see if there were any other fields that  
 12 might be able to, which was above and beyond  
 13 what we would normally do. Because of the  
 14 extensive amount of restrictions and the fact  
 15 that the doctor's recommendation was cannot  
 16 work in this capacity, it was determined by  
 17 each field director that they could not  
 18 accommodate him.

19 Q. When you say a field director, I have some  
 20 passing familiarity with this area. And  
 21 let's say, for example, Lowe Field. Is that  
 22 who you refer to as a field director, the  
 23 person in charge of Lowe Field?

Page 44

1 A. Each of the Army airfields have a director of  
 2 maintenance.  
 3 Q. So the person you're referring to is the  
 4 airfield director?  
 5 A. Yes, sir.  
 6 Q. And I believe Mr. Donley was the director at  
 7 the field that Mr. Houston had been working  
 8 at. Is that your memory?  
 9 A. Yes, sir.  
 10 Q. So you contacted all of the directors to see  
 11 if there were any other jobs or job  
 12 classifications that Mr. Houston could  
 13 perform?  
 14 A. No, sir, I did not and I would not.  
 15 Q. What did you do? Because that's what I  
 16 understood you to tell me.  
 17 A. No, sir. When a person returns from a length  
 18 of absence, an hourly employee will -- will  
 19 take their paperwork, in-process it. They  
 20 will make the contacts. They will fill out  
 21 the return-to-work slip. You have a copy of  
 22 one in some of the -- I would believe -- of  
 23 Mr. Houston's return-to-work slip that is

Page 45

1 signed by Mr. Donley and also signed by the  
 2 HR department. And any -- any circumstance,  
 3 we could not call to see if there's any  
 4 classification or any alternate job that a  
 5 person could do because that would affect  
 6 their conditions of employment and circumvent  
 7 the collective bargaining agreement. We can  
 8 only request can this person go back, can you  
 9 accommodate them in their current  
 10 classification, job, if you will.

11 Q. How would that circumvent the collective  
 12 bargaining agreement?  
 13 A. It would impose a classification on a person  
 14 without their request.  
 15 Q. So it's designed to protect the employee from  
 16 being put in some classification they don't  
 17 want?  
 18 A. The company cannot change a person's  
 19 conditions of employment without their  
 20 request.  
 21 Q. Okay. Did Mr. Houston direct the company not  
 22 to look at any other classifications where he  
 23 might could be accommodated?

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

13 (Pages 46 to 49)

Page 46

Page 48

1 A. How do you mean, sir?

2 Q. Well, you said that you couldn't reclassify  
3 him or change his conditions of employment  
4 without his consent or without his request.  
5 And did he tell the company that he didn't  
6 want to be put in any other job  
7 classification where his physical  
8 restrictions could be accommodated?

9 A. Were Mr. Houston to have received  
10 consideration as an active employee, he  
11 would have had to have requested a  
12 reclassification.

13 Q. Okay. Did he request a reclassification?

14 A. Mr. Houston was not an active employee.

15 Q. So he couldn't request a reclassification?

16 A. Not as an inactive employee.

17 Q. So he's an inactive employee, and he can't  
18 request a reclassification; is that right?

19 A. That's correct, sir.

20 Q. And his medical restrictions prevent him from  
21 coming back to work as an active employee; is  
22 that correct?

23 A. To my knowledge, yes, sir.

Page 47

Page 49

1 Q. That was a determination that AFS made; is  
2 that not correct?

3 A. What is that, sir?

4 Q. I'm sorry?

5 A. What is a determination that AFS made?

6 Q. Well, you told me you went through some  
7 process where you contacted all the field  
8 directors, and they told you they couldn't  
9 accommodate his restriction. So did you not  
10 make a determination that he couldn't work as  
11 an aircraft mechanic because of his physical  
12 restrictions?

13 A. No, sir. His physician made that  
14 determination.

15 Q. Did not his physician request that he be  
16 placed in another position where he didn't  
17 have to do those things?

18 A. How do you mean, sir?

19 Q. Well, I mean, you're now telling me that  
20 you're not relying on your own analysis, but  
21 you're relying on the physician's analysis.  
22 And I'm asking you if the physician did not  
23 also indicate that it was his belief that

1 Mr. Houston should be reclassified or  
2 transferred to a position where he could meet  
3 the physical requirements to work.

4 A. I do believe there is a return-to-work that  
5 states that he should be put in a sedentary  
6 job. However, under Article 35.2, an  
7 employee must request.

8 Q. All right. And the company denies that  
9 Mr. Houston requests to be placed in another  
10 position where he could continue to work?

11 A. I'm not aware of Mr. Houston ever requesting  
12 an alternate classification.

13 Q. All right. Do you have any documentation  
14 that he never requested to be placed in an  
15 alternate classification?

16 A. I have no documentation showing where he did.

17 Q. All right. Do you have any that he did not?

18 A. I don't understand the question, sir.  
19 That -- that is a double negative.

20 Q. Well, we're in jabberwocky now, anyway. So I  
21 guess that we're dancing on the head of a pin  
22 as the scholastics used to call it. What  
23 qualifications do your field directors have

1 to make a determination as to whether a job  
2 can be accommodated within the requirements  
3 of the Americans With Disabilities Act?

4 A. How do you mean they're qualifications, sir?

5 Q. I mean, what qualifications do they have in  
6 order to make a determination consistent with  
7 the requirements of the Americans With  
8 Disabilities Act as to whether a job can be  
9 accommodated or not?

10 A. Thank you. By contract, the field managers  
11 must have specific experience, not only in  
12 maintenance but in aircraft maintenance,  
13 specifically; and all of them have specific  
14 experience to the airframe that they  
15 maintain. In other words, they are  
16 considered the subject matter experts on not  
17 only the aircraft but the maintenance of  
18 those aircraft. These individuals are  
19 responsible to answer to the government on  
20 all aspects of maintenance, maintenance  
21 production --

22 (Brief interruption)

23 A. -- as well as the physical requirements of

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

14 (Pages 50 to 53)

Page 50

1 the manpower to maintain the aircraft. Does  
2 that make sense, sir?

3 Q. Do they have any expertise in the area of  
4 compliance with the Americans With  
5 Disabilities Act?

6 MS. GRAVELINE: Object to form.

7 A. How do you mean, sir?

8 Q. Well, you told me earlier that you were the  
9 person who was in charge of compliance with,  
10 among other things, the ADA.

11 A. Yes, sir.

12 Q. Do those individuals who are field directors  
13 have any expertise in meeting the  
14 requirements to comply with the ADA?

15 A. How do you mean expertise?

16 Q. I mean, expertise, knowledge and training.

17 A. They do have knowledge, and they do have  
18 training.

19 Q. What is the nature of their knowledge?

20 A. I can't answer the nature of their  
21 knowledge. I can answer the nature of their  
22 training.

23 Q. What knowledge do they have? What knowledge

Page 51

1 do they have?

2 A. How do you mean, sir?

3 Q. I mean, what knowledge do they have? You  
4 said they have knowledge and training, so  
5 what knowledge do they have?

6 A. They have received training.

7 Q. All right. Well, I've received training on  
8 playing the guitar, but I'll admit I don't  
9 have much knowledge or skill at it. What  
10 knowledge do they have? Do you have any  
11 knowledge of what knowledge they have?

12 A. I'm aware that they receive annual training.

13 Q. Then tell me about the training they get.

14 A. To my knowledge, besides any training I have  
15 provided on a one-to-one basis, each field  
16 manager is afforded training packages which  
17 are available in my office as well as through  
18 L3, the parent company, on discrimination,  
19 harassment, ADA, FMLA, the primary  
20 supervisory type of legislation.

21 Q. So they have packets of information that are  
22 available to them. That's their training?

23 A. How do you mean, sir?

Page 52

1 Q. Well --

2 A. Each one is different. I can't answer for a  
3 group of people. I can answer for specific  
4 people at certain times. You're asking me to  
5 balloon everybody into a group of knowledge.

6 Q. Well, let me ask you about Mr. Donley. What  
7 training did he have?

8 A. Besides having a master's degree in Human  
9 Resources, which also covers labor law, same  
10 course as I took, he also has a master's  
11 degree in business administration and is  
12 extremely well-versed in aspects of Human  
13 Resources.

14 Q. What training does he have relative to making  
15 determinations about accommodations and job  
16 skills in compliance with the ADA?

17 A. Thank you. Mr. Donley has an extensive  
18 background in knowing the job functions and  
19 functional capacity for each position to  
20 include his aircraft maintenance personnel,  
21 what their day-to-day duties include, what  
22 they are required to do on a day-to-day basis  
23 and what he can or cannot accommodate.

Page 53

1 Q. All right. Is there any record that  
2 Mr. Donley or any other field director made  
3 any such analysis of all of the job duties  
4 and whether or not there was any way that  
5 they could be modified in order to  
6 accommodate Mr. Houston's disabilities?

7 A. The ADA doesn't require modification of a  
8 primary function of the job, but I'm not  
9 aware of any such analysis. I am not.

10 MR. STARLING: Can we take a break here  
11 in a minute?

12 MR. JACOBS: Yes. Make it brief,  
13 though, because we are going to  
14 finish by noon, so let's take  
15 about five minutes.

16 (Brief recess)

17 Q. I believe when we took a break that I was  
18 asking you if there were any records of any  
19 analysis that was performed to determine  
20 whether Mr. Houston could or could not  
21 perform the duties of the job of aircraft  
22 mechanic. And your answer was?

23 A. I'm not aware of any physical analysis, no,

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

15 (Pages 54 to 57)

Page 54

1       sir.

2   Q. Are you aware of any record of any such  
3   analysis having been made? Let me rephrase  
4   that. Does the company have a record of any  
5   such analysis having been performed?

6   A. To my knowledge, the record that exists is  
7   the field managers were notified, told of the  
8   restrictions, and having full, in-depth  
9   knowledge of the functional capacity of the  
10   aircraft mechanic, were qualified to make the  
11   decision whether there was an accommodation  
12   available.

13   Q. And that was the extent of the company's  
14   efforts to provide any reasonable  
15   accommodation for Mr. Houston; is that  
16   correct?

17   A. How do you mean, sir?

18   Q. I mean, is there any record anywhere that the  
19   company did any further action or undertook  
20   any further actions to make a determination  
21   as to whether there were any means to  
22   accommodate Mr. Houston's disability?

23   MS. GRAVELINE: Object to form.

Page 56

1   Q. And who would that individual be or who would  
2   it have been in 2005?

3   A. Currently it would be Ms. Penny Westrick.

4   Q. All right. Do you know if she held that job  
5   at that time?

6   A. I believe so, sir.

7   Q. Do you have any knowledge of what kind of  
8   information would be provided to justify that  
9   leave, continuation of a leave?

10   A. I'm sorry, sir. Question again.

11   Q. Do you know what kind of information a doctor  
12   would need to supply in order to justify the  
13   continuation of the short-term disability  
14   leave?

15   A. I don't understand, sir. I don't know of  
16   documentation that's required, therefore, I  
17   don't know what the doctor would have to  
18   submit.

19   Q. Could you tell me what the company's  
20   procedures are for an individual to qualify  
21   for FMLA leave?

22   A. The company's requirements are the same as  
23   the federal language.

Page 55

1   A. The only thing we were presented were  
2   Mr. Houston's restrictions.

3   Q. Right.

4   A. And in contacting the field managers, those  
5   restrictions could not be accommodated.

6   Q. And that was the end of the inquiry; is that  
7   correct?

8   A. Yes, sir.

9   Q. Okay. During the time that Mr. Houston was  
10   on short-term disability, did he have to  
11   submit medical verification of his condition  
12   to maintain that leave?

13   A. I don't know, sir.

14   Q. Okay. Does the Human Resources Department of  
15   AFS require once an employee goes on medical  
16   leave or short-term leave that they  
17   provide -- does it require any documentation  
18   so that they can continue on that leave?

19   A. I don't know, sir.

20   Q. Okay. Who would know?

21   A. The best person to answer that would be the  
22   Human Resources Medical Services Program  
23   coordinator.

Page 57

1   Q. How does the company implement those  
2   requirements of the federal language?

3   A. How do you mean, sir?

4   Q. I mean, what does the company require an  
5   individual to do?

6   A. Thank you. An employee must fill out a  
7   request for family medical leave. And  
8   depending on the reason for medical  
9   certification from the Department of Labor,  
10   using a Department of Labor form, is received  
11   and the response is given from one of the HR  
12   managers.

13   Q. Okay. What does an individual have to do in  
14   order to -- is there any requirement that an  
15   individual must do anything else in order to  
16   maintain the leave?

17   A. How do you mean, sir?

18   Q. Does the company require medical  
19   certification periodically in order to  
20   continue on FMLA leave?

21   A. I don't know, sir. Once a person has been  
22   granted family medical leave, based on a  
23   doctor's certification which usually gives

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

16 (Pages 58 to 61)

Page 58

1 the time, the inclusive time, is basically  
 2 the -- the lack of authorization unless it's  
 3 intermittent. If a -- if a person -- if  
 4 their condition has changed such as if a  
 5 doctor says a person should be given two  
 6 weeks and their condition has not improved or  
 7 has gotten worse, yes, they will have to have  
 8 medical certification to extend it. If  
 9 they're given 12 weeks and they want to  
 10 return to work after six, yes, they'll have  
 11 to have a doctor's release. But these aren't  
 12 required to just inadvertently or --

13 Q. Okay.

14 MR. JACOBS: I'd like to mark this  
 15 Plaintiff's Exhibit #5. I have  
 16 a -- Monica, if I can get down in  
 17 here and find it. It's the  
 18 scheduler description. Here you  
 19 go.

20 MS. GRAVELINE: Thank you.

21 Q. Do you recognize this document?

22 A. Yes, I do.

23 Q. What is it?

Page 58

Page 60

1 availability of production and maintenance  
 2 conditions and select assignments of  
 3 aircraft --

4 A. When you said -- I'm sorry to interrupt, but  
 5 when you had said review the requirements, I  
 6 was looking at the bottom of this where it  
 7 says requirements. I didn't know you were  
 8 talking about the essential --

9 Q. Essential duties?

10 A. -- duties and responsibilities. Okay.  
 11 Yeah.

12 Q. If you would look at those and just tell me  
 13 if there are any of those that he couldn't do  
 14 or, you know, that he couldn't be  
 15 accommodated.

16 A. Possibly.

17 Q. Which one possibly?

18 A. Number two.

19 Q. Number two is coordinates with flight and  
 20 company departments to ensure that specific  
 21 requirements are known and that aircraft are  
 22 scheduled in accordance with policies or  
 23 procedures. How would his restrictions

Page 59

Page 61

1 A. This is the job description for an aircraft  
 2 scheduler.

3 Q. As of 2005?

4 A. Yes, sir.

5 Q. Has that job description changed since 2005?

6 A. Not to my knowledge.

7 Q. I'd like you to review the requirements of  
 8 this and ask you if there are any of those  
 9 things that Mr. Houston's medical  
 10 restrictions will prevent him from doing?

11 MS. GRAVELINE: Object to form.

12 A. I can't answer that question, sir.

13 Q. You can't answer that question?

14 A. I don't understand it.

15 Q. Okay. We can go through them, I guess, one  
 16 by one. Was there anything regarding  
 17 Mr. Houston's restrictions about lifting more  
 18 than 25 pounds, not being able to stand for  
 19 more than an hour and a half or sit for more  
 20 than an hour and a half without a break or  
 21 bend at the waist, to lift, pull, push, and  
 22 so that would keep him from being able to  
 23 review the aircraft requirements and

1 prevent him from being able to do that?

2 A. The aircraft scheduler, to my knowledge, has  
 3 to be able to interact not only from their  
 4 basic work area, their -- their desk area,  
 5 they also have to be able to go to other  
 6 departments which can be as far as across the  
 7 airfield a distance away, up and down stairs,  
 8 and at points in time, meeting with different  
 9 parts of the maintenance group to find out  
 10 status on aircraft; such as, for me to find  
 11 it, if the Army is requesting an aircraft for  
 12 a specific type mission for a two-hour stint,  
 13 I have to find that aircraft that best fits  
 14 that configuration that has the closest  
 15 amount of time on it before it goes into a  
 16 type of maintenance. It's not something you  
 17 can do from a desk and say, this aircraft  
 18 goes here because it's ready, this one goes  
 19 here. You have to also monitor your flight  
 20 hours to maintenance hours and try to  
 21 identify those aircraft by their maintenance  
 22 status and when they're best available for  
 23 the type of mission. So that means you're

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

17 (Pages 62 to 65)

Page 62

Page 64

1 having to go completely mobile.

2 Now, whether or not that is something  
3 that can be accommodated, in any  
4 circumstance, would not be my call. We  
5 would contact the field manager and let him  
6 know because each field is slightly  
7 different. But the first thing that would  
8 have to happen is he would have to request  
9 reclassification. His file would have to be  
10 reviewed. He would have to be qualified for  
11 the job, available for the job, and he would  
12 have to be an active employee to -- to  
13 request a position.

14 Q. I understand the company's position in that  
15 it's irrelevant because he wasn't an active  
16 employee, but I would like to try to make  
17 some determination. And you're telling me  
18 that the aircraft scheduler had to like  
19 physically go out and locate all of these  
20 aircrafts and determine their condition in  
21 order to know whether they could be scheduled  
22 for a flight or not?

23 A. No, sir, that's not what I said.

Page 63

Page 65

1 Q. Okay. Well, that's what I understood you to  
2 say.

3 A. He has to be able to go from site to site.

4 Q. From what kind of site to what kind of site?

5 A. Within the airfield.

6 Q. Within the airfield?

7 A. Yes, sir.

8 Q. Okay. What kind of sites are in the  
9 airfield?

10 A. How do you mean, sir?

11 Q. Well, I don't know. You're telling me you'd  
12 have to go to site to site within the  
13 airfield.

14 A. Okay. Each field is differently configured.  
15 You have the Army, which is where we report  
16 to. You have aircraft records. You have  
17 maintenance. You have the director's  
18 office. And a scheduler has to be able to go  
19 from each of these and be able to maintain  
20 status.

21 Q. Does the company have a database that  
22 maintains that information?

23 A. Not to my knowledge.

1 Q. So the scheduler has to physically go to each  
2 of these locations and make an assessment of  
3 the availability of aircraft?

4 A. To my knowledge, quite often they do but --

5 Q. How much knowledge do you have of the job of  
6 aircraft scheduler?

7 A. Only what's been told to me.

8 Q. And who has told you anything about the job  
9 of aircraft scheduler?

10 A. The field managers.

11 Q. Any other things there that you think  
12 couldn't be accommodated?

13 MS. GRAVELINE: Object to form.

14 A. Once again, I don't know because I wouldn't  
15 be the one making that determination.

16 Q. But you have some knowledge of the job?

17 A. Yes, sir, but I wouldn't be making the  
18 determination. Each field is different.

19 Q. I'm sorry, but you're the only one I've got  
20 here representing the company today. And you  
21 have some knowledge of the job. So --

22 A. Yes, sir.

23 Q. Is there anything else on there that you

1 think couldn't be accommodated?

2 MS. GRAVELINE: Object to form. I  
3 think he's not qualified to answer  
4 these questions. And I don't  
5 recall this being a topic.

6 A. I don't know, sir.

7 Q. How does the company make a determination  
8 that a person is qualified for the position  
9 of flight scheduler?

10 A. The first thing that has to happen is a  
11 person has to request it.

12 Q. Well, suppose a person requests it. How does  
13 the company go about determining that they're  
14 qualified for it?

15 A. The human resource manager or the program  
16 coordinator for manpower will review the  
17 personnel file.

18 Q. And what would he look for in a personnel  
19 file? I mean, how would they know whether  
20 the person was qualified or not?

21 A. They would look for what's required in the  
22 job description.

23 Q. So everything that's in the job description

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

18 (Pages 66 to 69)

Page 66

1 would have to be in the personnel file?

2 A. Anything that's listed as education,

3 experience, or requirements, yes, sir.

4 Q. If it were a new applicant who didn't have a

5 personnel file, how would you determine if

6 they were qualified?

7 A. There are two parts to that. Army Fleet

8 Support primarily uses the Alabama State

9 Employment Services, so all applicants are

10 prescreened. If somehow or other a person

11 gets through that and is either

12 misrepresented or -- or somehow or other gets

13 to the AFS recruiting site and they don't

14 hold those requirements, they must have it in

15 their possession when they get there. That's

16 where the final check and balance is. Their

17 documents are reviewed at the time of

18 application.

19 Q. Do you know if AFS has any knowledge of

20 whether Mr. Houston can type 30 words a

21 minute or not?

22 A. No, sir.

23 Q. I'd like to direct you to the responses to

Page 68

1 A. How do you mean, sir?

2 Q. Well, it's kind of a hedged response. So

3 what I want to know is if his work wasn't

4 unsatisfactory, how would AFS know that?

5 A. That would depend on the severity.

6 Q. How would it depend on severity?

7 A. Okay. And all I can do is -- is give

8 examples which may or may not pertain to him.

9 You come in to work and you get into an

10 argument with another employee. We have work

11 rules that preclude or prohibit -- I'm

12 sorry -- not preclude but prohibit employee

13 conflicts. Well, you have a conflict but

14 it's resolved. Your first line supervisor

15 resolves it right there. Whether it's your

16 fault or not, you had an employee conflict.

17 The supervisor can administer work rules and

18 give you a letter or could just put an e-mail

19 saying, please, watch whatever you do, or not

20 produce a record at all. But there was still

21 unsatisfactory performance. And once again,

22 depending on severity would depend on whether

23 or not the supervisor made a record or

Page 67

1 the request for admission. I believe you

2 have that before you. I don't remember which

3 one we marked it but --

4 A. Is that #3?

5 MS. GRAVELINE: I have it as #2.

6 Q. I'd like to direct you to page 2 on number

7 eight. I'm a little puzzled at the

8 response. AFS admits that he was generally

9 considered to perform satisfactorily through

10 September the 1st but couldn't admit he did

11 so all times.

12 And other than that, you deny the

13 request. Are you aware of any unsatisfactory

14 performance by Mr. Houston during that time

15 period?

16 MS. GRAVELINE: Object to form.

17 A. I don't know, sir. I'm not his supervisor.

18 Q. Does the company have any record of any

19 unsatisfactory performance?

20 A. I don't know, sir.

21 Q. All right. If there were any documents that

22 would indicate that his performance was

23 unsatisfactory, where would they be located?

Page 69

1 referred it to Labor Relations for formal

2 action. So to answer at all times, I -- I

3 can't answer that.

4 Q. Okay. If there were a record of any

5 unsatisfactory performance, would it be in

6 these e-mails or other documents you've

7 referred to?

8 A. I've not said that there were e-mails.

9 Q. I'm just asking you if there were. You said

10 that the supervisor could put it in an e-mail

11 or he could do something else. That's why I

12 said e-mail.

13 A. Yeah. A -- a supervisor could do that. Now,

14 whether his supervisor did that or not, I

15 don't know. And whether there was such a

16 thing that required it, I don't know. I

17 can't answer the question because it says at

18 all times.

19 Q. Yeah. And I accept that you don't know, but

20 I'm asking you, If there were a record, where

21 would it be?

22 A. I don't know, sir.

23 Q. You don't know the company keeps its records

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

19 (Pages 70 to 73)

Page 70

1 of unsatisfactory performance of employees?  
 2 A. Depending on severity, yes, sir.  
 3 Q. Well, where are all the possible places that  
 4 you could keep it depending on severity?  
 5 MS. GRAVELINE: Object to form.  
 6 A. I don't know, sir.  
 7 Q. If I wanted to know if there were any  
 8 unsatisfactory performance on the part of  
 9 Mr. Houston, where would I have to look?  
 10 A. Are you --  
 11 MS. GRAVELINE: Object to form.  
 12 A. Are you asking about disciplinary actions or  
 13 unsatisfactory performance?  
 14 Q. I'll ask you about both. In disciplinary  
 15 actions, where would they be?  
 16 A. Labor Relations.  
 17 Q. And where is Labor Relations?  
 18 A. Adjacent to Human Resources.  
 19 Q. All right. Is that a department within the  
 20 AFS Human Resources division?  
 21 A. It is not, sir.  
 22 Q. It is separate?  
 23 A. Yes, sir.

Page 72

1 Labor Relations is the negotiating body or  
 2 representative of AFS to the union.  
 3 Q. All right. So if an employee were  
 4 disciplined, it would go to Labor Relations,  
 5 not to HR?  
 6 A. Yes, sir.  
 7 Q. Okay. Let's suppose -- well, are employees  
 8 evaluated on their job performance by AFS --  
 9 MS. GRAVELINE: Object to form.  
 10 Q. -- formally?  
 11 A. How do you mean, sir?  
 12 Q. Well, in various jobs I've held, my  
 13 supervisor conducted a job evaluation and  
 14 that was put somewhere. Are AFS employees  
 15 evaluated on the job by their supervisors  
 16 formally?  
 17 A. Once again, we have two parts of employees  
 18 hourly and management. Are you talking all  
 19 AFS --  
 20 Q. Let me ask you about hourly since that's  
 21 what Mr. Houston was.  
 22 A. Thank you. And are they evaluated?  
 23 Q. Yes. Is there a formal evaluation process?

Page 71

1 Q. Do you know who was in charge of that  
 2 division in 2005 by any chance, the  
 3 individual?  
 4 A. Of what?  
 5 Q. Of Labor Relations?  
 6 A. The manager for Labor Relations is Mark  
 7 Couch.  
 8 MS. GRAVELINE: C-O-U-C-H.  
 9 Q. How does Labor Relations differ from Human  
 10 Resources?  
 11 MS. GRAVELINE: I'm sorry. I was  
 12 spelling for the court reporter.  
 13 Q. How does Labor Relations differ from Human  
 14 Resources?  
 15 A. How do you mean, sir?  
 16 Q. Well, I don't understand the distinction, so  
 17 I'm just trying to find out how they're  
 18 different. That's my ignorance about union  
 19 work places, I suppose.  
 20 A. Labor Relations is a separate function within  
 21 Army Fleet Support. It's external to Human  
 22 Resources. Human Resources process the  
 23 day-to-day activities of all employees.

Page 73

1 A. Only during the probationary period, which is  
 2 at 30, 60, and 85 days.  
 3 Q. And I didn't hear the -- it's a 36?  
 4 MS. GRAVELINE: 30, 60, 85.  
 5 A. 30, 60, and 85 days.  
 6 Q. Oh, okay.  
 7 A. It's a performance evaluation for hourly  
 8 employees, and that's only during the  
 9 probationary period. I'm sorry. I'm not a  
 10 loud person.  
 11 Q. Then it would be appropriate for me to  
 12 conclude that Mr. Houston was never subjected  
 13 to any formal job evaluation by AFS since his  
 14 seniority would have put him beyond that  
 15 point when AFS took over?  
 16 A. I'm not --  
 17 MS. GRAVELINE: Object to form.  
 18 A. I'm not aware of any.  
 19 Q. Okay. Number 10.  
 20 A. On?  
 21 Q. The request for admissions. Just want -- I'm  
 22 basically clarifying a few things now. I  
 23 asked --

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

20 (Pages 74 to 77)

Page 74

1 MS. GRAVELINE: Plaintiff's #2.  
 2 Q. I asked AFS to indicate that the -- or to  
 3 admit that the defendant, AFS, did not offer  
 4 to consider any accommodations that would  
 5 permit the plaintiff to remain employed. And  
 6 that was denied, they said. What  
 7 accommodations did AFS consider that would  
 8 have permitted Mr. Houston to remain  
 9 employed?  
 10 A. To my knowledge, there was no request for  
 11 accommodation from Mr. Houston nor was any  
 12 request -- no request for accommodation was  
 13 stated by Mr. Houston. Sorry.  
 14 Q. Mr. Houston didn't ask to be reclassified as  
 15 an aircraft scheduler?  
 16 A. No, sir, he did not.  
 17 Q. Verbally he did not ask to be reclassified as  
 18 an aircraft scheduler?  
 19 A. To my knowledge, at no time did Mr. Houston  
 20 ask to be reclassified to an aircraft  
 21 scheduler.  
 22 Q. Number 11. Well, I'm not finished with ten.  
 23 Excuse me. Were there any accommodations

Page 76

1 made?  
 2 A. By, say, a summation of the facts, yes.  
 3 Q. And where is that summation of facts?  
 4 A. In Mr. Houston's complaint to the OFCCP where  
 5 he states that he returned, an HR person  
 6 suggested to him that he consider a position  
 7 such as aircraft scheduler but that he would  
 8 have to be able to type 30 words a minute.  
 9 In speaking with the hourly employees who  
 10 would have received him, they recall having  
 11 conversations with Mr. Houston and that when  
 12 Mr. Houston was told to consider or consider  
 13 a -- a clerical position such as, he became  
 14 upset, demanded to go back as an aircraft  
 15 mechanic, and he left.  
 16 Q. Is there a record of that conversation  
 17 anywhere?  
 18 A. Not my knowledge sir.  
 19 Q. And you don't know who the individual was  
 20 that reports that that conversation took  
 21 place?  
 22 A. In discussing with our hourly employees, the  
 23 two primary persons who received him and

Page 75

1 that were considered that would permit him to  
 2 remain employed by the company whether he  
 3 requested them or not?  
 4 MS. GRAVELINE: Object to form.  
 5 A. The company cannot make assumptions about a  
 6 person's limitations or restrictions. If a  
 7 person feels they have restrictions as such  
 8 that they would like to request -- would like  
 9 to request accommodations, they have to state  
 10 so. And then those accommodations can be  
 11 evaluated in a two-way communication. To my  
 12 knowledge, when Mr. Houston returned and an  
 13 hourly employee talked to him and asked him  
 14 if he would consider an alternative position  
 15 such as a clerical scheduler position,  
 16 Mr. Houston rejected that offer, although the  
 17 hourly employee could not make a contractual  
 18 offer the company or the union would have  
 19 to -- have to live by.  
 20 Q. Who was that hourly employee that made an  
 21 offer to him of some alternative assignment?  
 22 MS. GRAVELINE: Object to form.  
 23 Q. Is there a record of that offer having been

Page 77

1 advised him on his options were the shop  
 2 steward, Ms. Jo Ann Camarata, and the other  
 3 hourly employee Ms. Cathy Jeffers.  
 4 Q. So are those the two HR representatives that  
 5 he dealt with when he brought his first  
 6 return-to-work form and his second return-to-  
 7 work form to AFS?  
 8 A. Those are the hourly employees from HR he  
 9 would have seen.  
 10 Q. And did either one of those make a written  
 11 record of their contact with Mr. Houston on  
 12 those dates?  
 13 A. Not to my knowledge, sir.  
 14 Q. Subsequent to those dates, have they made any  
 15 written record of their encounters with  
 16 Mr. Houston on those dates?  
 17 A. Mr. Houston has come in to apply for  
 18 benefits, for his continued benefits, and  
 19 they've received him and processed his  
 20 paperwork.  
 21 Q. That would have been after the incidence  
 22 where he came and brought his return to work  
 23 form?

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

21 (Pages 78 to 81)

Page 78

Page 80

1 A. That would be subsequent, yes, sir.  
 2 Q. Have these two individuals that you named,  
 3 Ms. Jeffers and who was the other?  
 4 A. Camarata.  
 5 Q. Camarata. Have either one of those made any  
 6 written record of their encounter with  
 7 Mr. Houston on those two occasions subsequent  
 8 to those dates?  
 9 A. Are you asking if they have produced after  
 10 the fact documents of their previous  
 11 encounters or --  
 12 Q. Yes.  
 13 A. -- documentation as to encounters after the  
 14 fact?  
 15 Q. I'm asking you if on those two dates, one of  
 16 which we believe was March the 10th or March  
 17 the 7th -- and I will admit there is some  
 18 confusion as to that date. I think it's  
 19 March the 7th -- and March the 14th when  
 20 Mr. Houston came to the HR office in  
 21 Daleville and presented a return-to-work  
 22 form, he interacted with two HR  
 23 professionals. Those individuals, according

Page 79

Page 81

1 to what you told me were Ms. Camarata and  
 2 Ms. Jeffers. Subsequent to those dates, have  
 3 either of those individuals made any record,  
 4 any documentation of their interaction and/or  
 5 conversation with Mr. Houston on those  
 6 dates?  
 7 A. About the previous encounters when he came  
 8 back for --  
 9 Q. Right, about the previous encounters.  
 10 A. Thank you, sir. Thank you. Not to my  
 11 knowledge.  
 12 Q. And your knowledge today is the company's  
 13 knowledge.  
 14 A. Yes, sir.  
 15 Q. And you've already told me that they didn't  
 16 make a contemporaneous record other than the  
 17 fact that he just -- when he signed in, there  
 18 was a record that he came.  
 19 A. Yes, sir.  
 20 Q. Number 12, it's a little more information  
 21 here. I asked if reasonable accommodations  
 22 were available, who would have permitted the  
 23 plaintiff, Mr. Houston, to transfer to

1 another position with the defendant. And  
 2 there is a denial along with the explanation  
 3 that he failed to submit a status-change form  
 4 as required by the Collective Bargaining  
 5 Agreement and, therefore, was ineligible.  
 6 And I think we've been through that. You  
 7 told me that he had to be an active employee  
 8 in order to request a transfer. Is that  
 9 correct, according to the Collective  
 10 Bargaining Agreement?  
 11 A. Yes, sir.  
 12 Q. Therefore, he couldn't transfer to another  
 13 position; is that correct?  
 14 MS. GRAVELINE: Object to form.  
 15 A. How do you mean, sir? I'm sorry. Please.  
 16 Q. If he had to be an active employee to request  
 17 a transfer, I assume that you're telling me  
 18 that he couldn't be transferred to another  
 19 position since he wasn't an active employee.  
 20 A. Yes, sir.  
 21 Q. To go back to the request for admission, were  
 22 there reasonable accommodations available  
 23 that would have been permitted him to

1 transfer to another position?  
 2 A. Are you talking about number 12?  
 3 Q. Yes. Whether he asked for them or not or  
 4 whether he was an active employee or not,  
 5 were there reasonable accommodations  
 6 available if he had been transferred to  
 7 another position?  
 8 A. I can't make that decision, sir, for several  
 9 reasons.  
 10 Q. Okay.  
 11 A. Bear with me.  
 12 Q. Name them for me.  
 13 A. Thank you. The first off is we don't know  
 14 what he would have requested. Therefore, we  
 15 would have had to have first off looked to  
 16 see what he's requesting, is he qualified, is  
 17 the position available, does he meet the  
 18 fundamental job -- requirement of the  
 19 description, and could he be accommodated.  
 20 Obviously, if -- if you are a -- an  
 21 aircraft mechanic and you suffer from vertigo  
 22 and you request a reasonable accommodation  
 23 and the only thing available is a pilot, can

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

22 (Pages 82 to 85)

Page 82

1 I give you a pilot's position? No. Because  
 2 once again, that can't be accommodated. If  
 3 you're a mechanic and your lifting  
 4 restrictions are 25 pounds and the only thing  
 5 available is a sheet metal mechanic who lifts  
 6 more than an aircraft mechanic, I can't just  
 7 say, well, we can move here because we're  
 8 going to make a reasonable accommodation,  
 9 move you to another classification. I can't  
 10 do that unless, first off, you identify what  
 11 you are requesting to fall within a provision  
 12 of CBA 35.2.

13 We then look at your personnel file,  
 14 make sure that you're qualified, meet  
 15 provisions of job description. Then once  
 16 again, we would have to contact that field  
 17 manager and see under this classification,  
 18 you know, as an active employee under this  
 19 classification, can you be accommodated in  
 20 that because the other classifications also  
 21 require certain -- certain functional  
 22 capacity. Does that make sense, sir?

23 Q. Okay. Is it AFS's position that if an

Page 82

Page 84

1 circumvented other people who had a request  
 2 on file.

3 Q. Is it your position AFS would have no  
 4 obligation to discuss that with the  
 5 individual?

6 MS. GRAVELINE: Object to the form. I  
 7 think he's answered this question.

8 A. The individual has to request and state that  
 9 they are requesting an accommodation.

10 Q. A specific accommodation?

11 A. There has to be two-way communication.

12 Q. Certainly.

13 A. When Army Fleet Support bargaining unit  
 14 personnel suggested to Mr. Houston, have you  
 15 considered a position such as, Mr. Houston  
 16 refused those and left. There was no two-way  
 17 communication.

18 Q. Which AFS bargaining personnel suggested that  
 19 he consider a position such as an aircraft  
 20 scheduler?

21 A. To the best of our knowledge, in conversation  
 22 and through investigation and preparation of  
 23 the responses to the -- to various agencies,

Page 83

Page 85

1 individual who has physical limitations such  
 2 as Mr. Houston did when he came back work  
 3 does not specifically request another  
 4 position, that the company has no obligation  
 5 to explore that option with him?

6 MS. GRAVELINE: Object to form.

7 A. How do you mean, sir?

8 Q. I mean, if Mr. Houston came back to work with  
 9 those physical restrictions and absolutely,  
 10 as you testified, didn't ask for another  
 11 position, is it your testimony on behalf of  
 12 the company that the company has no  
 13 obligation to consider any potential other  
 14 accommodation for him?

15 MS. GRAVELINE: Object to form.

16 A. The company can't make an assumption as to  
 17 what a person's intent for reclassification  
 18 is. When -- if I circumvent Article 35 and,  
 19 once again, you come back with limitations or  
 20 restrictions, well, I'm just going to put you  
 21 in this classification. I've changed your  
 22 conditions of employment. I've changed your  
 23 pay. I've changed your -- I may have even

1 we believe it to have been Ms. Jeffers and  
 2 Camarata.

3 Q. But there is no record that they made such an  
 4 offer?

5 A. How do you mean, sir?

6 Q. There is no paperwork that shows that they  
 7 made that offer and that it was refused, is  
 8 there?

9 A. Only through his own statement that that did  
 10 happen and that the individuals confirm that  
 11 they had discussions which included that. So  
 12 since both agreed that HR representatives did  
 13 suggest this to him and that he did not come  
 14 back and request such a position.

15 Q. Are you aware that Mr. Houston gave a  
 16 deposition yesterday?

17 A. Yes, sir.

18 Q. I want to show you what was marked in that  
 19 deposition as Defendant's Exhibit Number 17,  
 20 a rather lengthy document. And I'll show it  
 21 to you, and it's what was offered as the  
 22 Collective Bargaining Agreement that was in  
 23 effect in 2005. I believe it's still in

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

23 (Pages 86 to 89)

Page 86

1 effect, isn't it?  
 2 A. No, sir.  
 3 Q. Is there a new agreement?  
 4 A. Yes, sir.  
 5 Q. When was the new agreement adopted?  
 6 A. May 2005.  
 7 Q. I want to show you Section 35.1 which is on  
 8 page 92 of the agreement. Could you read for  
 9 me the language in that agreement that  
 10 prevented Mr. Houston's -- any accommodation  
 11 for Mr. Houston?  
 12 MS. GRAVELINE: Object to form.  
 13 A. How do you mean, sir?  
 14 Q. The language that permitted him to be  
 15 reclassified into another position.  
 16 A. When a vacancy occurs within a bargaining  
 17 unit classification other than that or as a  
 18 result of lay-off, it will be assigned to  
 19 employees on the active payroll.  
 20 Q. Okay. So that's the basis for the contention  
 21 that since he was not on the active payroll,  
 22 he could not be reclassified, correct?  
 23 A. How do you mean, sir?

Page 87

1 Q. Well, I'm trying to determine the basis. But  
 2 it's AFS's position, if I can restate it --  
 3 and you can change what I say if I'm not  
 4 correct. But it's AFS's position, as I  
 5 understand it, that you could not offer the  
 6 accommodation of transfer to another position  
 7 to Mr. Houston because he was not an active  
 8 employee because the union contract would  
 9 prevent it. Is that the language that the  
 10 company is relying on?  
 11 A. I -- I want to make sure I understand your  
 12 question, sir.  
 13 Q. Okay.  
 14 A. The first piece of language -- you ready --  
 15 is 35.2a which is employees must file a  
 16 separate status change request form for each  
 17 classification, bonus paid job, assignment  
 18 work week, or location desired. The second  
 19 part of language is 35.1 which states will be  
 20 assigned to employees on the active payroll.  
 21 Under 35.14, employees who become unable to  
 22 perform the duties and responsibilities of  
 23 the classification --

Page 88

1 Q. Slow down.  
 2 A. 35.14, employees who become unable to perform  
 3 the duties and responsibilities of the  
 4 classification or with permanent disability  
 5 or who cannot be accommodated as such the  
 6 accommodations defined or required by federal  
 7 law, which we already understand Mr. Houston  
 8 does not fall under, shall be allowed to  
 9 exercise his options under the lay-off  
 10 procedures for positions which he is able to  
 11 perform or shall be given a leave of absence  
 12 in accordance with Article 5.  
 13 Now, you've not given me Article 5 or  
 14 4.7, which is also referred. But those, the  
 15 intent of the language, which you have the  
 16 written language which is -- it started over  
 17 in 1951 has been run through over 18  
 18 different vendors or -- I'm sorry -- 18  
 19 different negotiations throughout history,  
 20 this is not the best language. Then you rely  
 21 on if the language is not clear, you go with  
 22 the intent of the language which is a person  
 23 who is not active does not have bumping

Page 89

1 rights to an active employee. The second  
 2 part is -- I just lost my train of thought  
 3 when I heard that going off. I'm sorry. The  
 4 second part --  
 5 Q. The second part that he doesn't have bumping  
 6 rights.  
 7 A. And the second part is the sustainment of an  
 8 employee's rights to reinstatement for up to  
 9 five years or length of employment,  
 10 protecting a person's job should they become  
 11 well enough to come back and fulfill the  
 12 primary functions of their job as they left.  
 13 Okay.  
 14 Q. Okay.  
 15 A. I didn't write it. Sorry.  
 16 Q. And that is what the company relies on for  
 17 Mr. Houston's status?  
 18 A. The language is presented past practice, and  
 19 the intent of the language protect those on  
 20 the active payroll. Yes, sir.  
 21 Q. As the individual at AFS who is responsible  
 22 for compliance with the ADA, are you  
 23 satisfied that that complies with the

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

24 (Pages 90 to 93)

Page 90

1 requirements of the ADA?

2 A. Yes, sir.

3 MR. JACOBS: It's eleven o'clock.

4 We'll take a break.

5 (Brief recess)

6 Q. Mr. Whitney, between September the 2nd of  
7 2004 and March the 14th of 2005, was  
8 Mr. Houston an active employee or an inactive  
9 employee?10 A. Mr. Houston became an inactive employee for  
11 purposes of benefits administration as of 30  
12 days. His 31st day he goes into a different  
13 status under the CBA for his benefits. At  
14 the end of the six months, which is what  
15 you're referring to, the end of his short-  
16 term disability, his status actually goes  
17 into an extended -- extended leave of absence  
18 as covered under a separate article which is  
19 his reinstatement rights.20 Q. For other purposes other than benefits  
21 continuation, was Mr. Houston an active  
22 employee or an inactive employee from  
23 September the 2nd of 2004 to March the 14th

Page 92

1 AFS?

2 A. This is one of them, yes, sir.

3 Q. And there was an earlier one, as I understand  
4 it; is that correct?5 A. That's not what I was referring to, sir. It  
6 was the associated letter from Dr. Manski or  
7 from Mr. Manski or Dr. Manski that stated he  
8 could not -- company that said he could not  
9 stay under the classification of aircraft  
10 mechanic.11 Q. So there was a letter that came along with  
12 this?

13 A. That Mr. Houston brought with him, yes, sir.

14 Q. Okay.

15 MR. JACOBS: Mark this as  
16 Plaintiff's #7.17 Q. This is the return-to-work slip. She's going  
18 to give you that one. Would you identify  
19 this document for me?20 A. Yes, sir. This is a return-to-work slip  
21 dated 3/14/05.22 Q. It says Army Fleet Support. Is this a  
23 standard form that AFS uses?

Page 91

1 of 2005?

2 A. Once again, his active status would have  
3 ended after 30 days.

4 Q. For all purposes?

5 A. Yes, sir.

6 Q. Okay. Just a few things here I'd like to  
7 identify. I think they've all already been  
8 admitted. And if you want me to pull out  
9 copies, I can, but --10 MS. GRAVELINE: Were they things that  
11 were admitted yesterday?

12 MR. JACOBS: Yes, I think so.

13 MS. GRAVELINE: I've got a stack.

14 Q. The first one will be Plaintiff's #6.

15 MS. GRAVELINE: Defendant's #6?

16 MR. JACOBS: No. I'm going to call it  
17 Plaintiff's #6.18 Q. This is the return to -- the medical excuse  
19 from Dr. Manski. Do you recognize that  
20 document?

21 A. Yes, sir.

22 Q. Is that the return-to-work authorization from  
23 Dr. Manski that Mr. Houston brought back to

Page 93

1 A. Yes, it is, sir.

2 Q. Okay. And the individual who signed this is  
3 Penny Westrick?

4 A. Yes, sir.

5 Q. What is the relevance of the numbers after  
6 her name?7 A. I'm sorry, sir. That's her badge number, her  
8 employee ID.9 Q. The reference here to see attached where it  
10 says authorized to return to work on 3/14,  
11 would they be the -- do you think it would be  
12 the letter that you've referred to?13 A. Anytime there are restrictions that exceed  
14 the amount of writing space, they'll just  
15 use, see attached; and that would be any  
16 letter that was provided by a doctor.17 Q. And then the block where it indicates able to  
18 accommodate medical restrictions, cannot, I  
19 believe we've talked about Don Donley. Was  
20 that the field director? Who was Don Donley?21 A. Mr. Don Donley was the field manager for  
22 Army -- Aviation Technical Test Center, ATTC.

23 Q. Where is that physically located?

SAMUEL HOUSTON v. ARMY FLEET SERVICES, LLC  
DEPOSITION OF ROBERT WHITNEY

2/21/2007

25 (Pages 94 to 97)

Page 94

1 A. Within Cairns Field just outside of  
2 Daleville, Alabama.  
3 Q. Who is Bill Parsons?  
4 A. At that time, Mr. Bill Parsons was the field  
5 manager for Lowe Field.  
6 Q. All right. And just to be sure I picked up  
7 on the distinction, Donley was a field  
8 director?  
9 A. Field director, field manager. They're  
10 synonymous.  
11 Q. They're interchangeable?  
12 A. They are synonymous.  
13 Q. And Larry Larkin, who was that?  
14 A. Mr. Larry Larkin was and still currently is  
15 the field manager for Cairns.  
16 Q. And Bob Chipman?  
17 A. Mr. Bob Chipman was at that time the field  
18 manager for Knox Army Airfield.  
19 Q. And those are all separate locations where  
20 aircraft mechanics work for AFS?  
21 A. Yes, sir. Each airfield has a different type  
22 of aircraft. As the Army students come  
23 through, they train on the primary aircraft

Page 96

1 all separately identified. And that's -- the  
2 only impact that has is each one has to be a  
3 request. Remember under Article 35.2, each  
4 request has to be filed separately. So if I  
5 want to be on second shift, I have to file a  
6 request for second. If I want to be on third  
7 shift, I have to request third shift. If I  
8 want to go from Hanchey Field to Lowe Field,  
9 I must request a separate field. Okay. So  
10 each -- each one is submitted separately.  
11 Q. So each one of these locations are places  
12 where an aircraft mechanic could or would  
13 work?  
14 A. Yes, sir.  
15 Q. Would aircraft schedulers also work at all of  
16 those locations?  
17 A. Yes, sir.  
18 Q. All right.  
19 MR. JACOBS: Mark this one as next  
20 Plaintiff's exhibit. What number  
21 is it going to be?  
22 COURT REPORTER: #8.  
23 MR. JACOBS: #8?

Page 95

1 at Cairns, which is a trainer. And then they  
2 go from there to their specific assigned  
3 aircraft. Knox Army Airfield will be a CH-47  
4 Chinook. Bill Parsons would be Lowe Army  
5 Airfield, which would be Black Hawks.  
6 Q. Okay. AA --  
7 A. ATTC.  
8 Q. ATTC is also a field as well?  
9 A. Per se. ATTC is almost a contract within a  
10 contract. As I stated, each Army airfield  
11 conducts student training. They have a  
12 specific type of aircraft. However, within  
13 the contract that Army Fleet Support has, a  
14 separate entity within it is called ATTC.  
15 They're funded separately; they're operated  
16 separately by a different contracting  
17 officer. They still file -- fall under the  
18 hierarchy and shared services of AFS.  
19 Q. Okay.  
20 A. However, ATTC is considered a separate field  
21 by the collective bargaining agreement. Each  
22 one is separately identified under Article 35  
23 whatever. It's -- it's in there. They're

Page 97

1 Q. Could you identify this form for me?  
2 A. Yes, sir. This is --  
3 Q. Please do.  
4 A. This is a personal status change request  
5 form. This is called a 212 form. It -- this  
6 one is an automated system document under the  
7 old HRIS called PRISM, P-R-I-S-M.  
8 Q. Okay. What's the purpose of this form?  
9 A. To identify a change of status.  
10 Q. What change is reported on this form?  
11 A. This is moving a person into inactive status.  
12 Q. Does it indicate where they were moved from?  
13 A. Yes, sir, Department 40.  
14 Q. What is Department 40?  
15 A. Inactive employee extended illness.  
16 Q. I notice it has the word "direct." Is there  
17 some other kind of extended illness other  
18 than a direct?  
19 A. No, sir. Direct and indirect employees are a  
20 government funded definition. In other  
21 words, those persons who handle aircraft,  
22 physically handle, aircraft mechanic, sheet  
23 metal -- any of those classifications that